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THE NON-AGRICULTURAL TENANCY ACT, 1949

(Act No. XXIII of 1949)

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An Act to make better provision relating to the law of landlord and tenant in respect of certain non-agricultural tenancies in [2][Bangladesh].

WHEREAS it is expedient to make better provision relating to the law of landlord and tenant in respect of certain non-agricultural tenancies in Bangladesh.

It is hereby enacted as follows :-

CHAPTER I
Preliminary

1. Short title, extent and commencement.- (1) This Act may be called the [3]* Non-Agricultural Tenancy Act, 1949.

(2) It extends to the whole of Bangladesh.

(3) It shall come into force on such date[4] as the [5][Government] may, by notification in the official gazette, appoint.

2. Definition.- In this Act, unless there is anything repugnant in the subject or context,-

(1) "Bengali year" means a year ending on the last day of the Bengali month of Chaitra;

(2) [6][Deputy Commissioner] includes any officer appointed by the Government to perform all or any of the functions of a Deputy Commissioner under this Act.

(3) "Landlord" means a person immediately under whom a non-agricultural tenant holds;

(4) "Non-agricultural land" means land which is used for purposes not connected with agriculture or horticulture and includes any land which is held on lease for purposes not connected with agriculture or horticulture irrespective of whether it is used for any such purposes or not, but does not include -

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1. For statement of objects and reasons, see Dhaka Gazette, Extraordinary, dated the 14th January, 1949, Pt. IVA, p. 111; for proceedings in the Assembly, see the proceedings of the meetings of the East Bengal Legislative Assembly held on the 12th March, 2nd, 4th, 8th, 9th and 11th April, 1949.

The Act was extended to those areas of the district of Mymensingh which were known as "Partially Excluded Areas" immediately before the coming into force of the Constitution which was abrogated by the Presidential Proclamation of the 7th October, 1958, vide notification No. 4997 L.R., dated the 19th October, 1949 published in Dhaka Gazette, Extraordinary, dated the 20th October, 1949, Pt. I. p. 830.

2. The word within square brackets were substituted and be read for the words "East Bengal" by P.O. 48 of 1972.

3. The words "East Bengal" were to be read as omitted by P.O. 48 of 1972.

4. The Act came into force with effect from the 20th October, 1949, vide notification No. 4995 L.R., dated the 19th October, 1949, published in Dhaka Gazette, Extraordinary, dated the 20th October, 1949, Pt. I, p. 830.

5. The word "Government" was replaced by the words "Provincial Government" by P.O. 48 of 1972.

6. The words within square brackets were substituted for the word "Collector" by E.P. Ord. IX of 1967, s. 3 which was approved with amendments by the Provincial Assembly of East Pakistan at its Meeting held on the 25th January, 1968.

(a) a homestead to which the provisions of section 182 of the Bengal Tenancy Act, 1885, apply,

(b) land which was originally leased for agricultural or horticultural purposes but is being used for purposes not connected with agriculture or horticulture without the consent either express or implied of the landlord, if the period for which such land has been so used is less than twelve years, and

(c) land which is held for purposes connected with the cultivation or manufacture of tea :

Provided that where an order has been made under section 72 converting a parcel of land which is not non-agricultural land into a tenancy to which the provisions of this Act apply such land shall be deemed to be non-agricultural land;

(5) "Non-agricultural tenant" means a person who holds non-agricultural land under another person with the consent of that person and is, or but for a special contract would be, liable to pay rent to such person for that land and also includes the successors-in-interest of the former but does not include any person who holds any such land on which any premises occupied by such person are situated if such premises have been erected, or are owned, by the person to whom such occupier is, or but for a special contract would be, liable to pay rent for such occupation;

Explanation : In this clause "premises" means any building such as a house, manufactory, warehouse, stable, shop or hut whether constructed of masonry, bricks, concret, wood, mud, metal or any other material whatsoever and includes any land appertaining to such building.

(6) "prescribed" means prescribed by rules made under this Act;

(7) "pucca structure" means any structure constructed mainly of brick, stone or concrete or any combination of these materials;

(8) all words and expressions used but not defined in this Act and used in the Bengal Tenancy Act, 1885, or the Transfer of Property Act, 1882, have the same meanings as in those Acts.

Comments

"2(5). Non-agricultural tenant means person who holds non-agricultural land under another person with consent of that person and is, or but for a special contract would be, liable to pay rent to such person for that land and also includes the successors-in- interest of the former but does not include any person who holds any such land on which any premises occupied by such person are situated if such premises have been erected, or are owned by the person to whom such occupier is or but for a special contract would be, liable to pay rent for such occupation:

Explanation- In this clause "premisses" mean any building such as a house, manufactory, warchouse, stable, shop or hut whether constructed of masonry, bricks, concrets, wood, mud or metal any other material whatsoever and includes any land appertaining to such building."

The said definition will apply prospectively so as to include the successors-in-interest of tenants. When the appellant's father died in 1939, no existing law conferred the status of tenants upon the successors-in-interest of tenants. Even the Bengal Act. No. IX of 1940 did not do so. If the appellant and the other heirs of Raj Kumar continued to occupy the suit land after Raj Kumar's death in 1939, they could only be treated as trespassers, not as tenants. That is why the landlords sued them for eviction as trespassers. The protection of section 88 is not available to the appellant because on the date of coming into force of the Non-Agricultural Tenancy Act, 1949 the appellant was not holding any land as tenant. Nor is the benefit of section 7(2) available to the appellant because the non-agricultural land which he was holding since 1939 was not comprised in any tenancy'. The question of continuing 12 years from 1934 does not arise at all. With the death of Raj Kumar in 1939 his successors-in-interest became simply trespassers (42 DLR (AD) 154 (157).

The expression 'non-agricultural land' has been defined in section 2 (4) of the Non-Agricultural Tenancy Act. It means land which is used for purposes not connected with agriculture or horticulture and includes any land which is held on lease for purposes not connected with agriculture or horticulture irrespective of whether it is used for any such purposes or not. (35 DLR (AD) 230).

The words "non-agricultural land" means a piece of land in joint possession and enjoyment without partition which may form tenancy or a portion of a tenancy. This interpretation will not throw the land open to the unlimited number of persons but to persons who are co-sharers tenants under the same landlord in respect of undivided land though such co-sharers tenants may be co-sharers tenants of the tenancy with other co-sharer tenants of the tenancy. (16 DLR 77).

The crux of the question whether a tenant is entitled to pre-empt is the undivided character of the tenancy. The word "land" in Section 24 of the Non-Agricultural Tenancy Act has been used in the same sense as "holding" has been used in section 26F of the Bengal Tenancy Act.

Meaning of Sub-section (5) of section 2 explained-A tenant occupying a structure as a tenant belonging to the owner is not person to whom section 2(5) applies.

Section 2 (5) of the Non-Agricultural Tenancy Act provides that non-agricultural tenant does not include any person who holds any land on which any premises occupied by such person are situated, if such premises have been erected or are owned by the person to whom such occupation is liable to pay rent for such occpier (36 DLR (AD) 48).

Section 2 (5): The expression "holds" in sub-section (5) of section 2 of the Act should be interpreted in its plain meaning as strict interpretation would create difficulties (4 DLR 598).

One G possessed the land in suit by virtue of a temporary oral lease under the plaintiffs. G. died in 1935, since then the defendants, his heirs, were in possession of the suit land but they were not recognised as tenants by the plaintiff who brought a suit for ejectment in 1943. The defendants claim that they 'were tenants' within the definition of the term in the Act of 23 of 1949 and that the Act was retrospective in operation and hence the suit could not succeed.

Monthly tenant-Entitled to rights gives to tenant under the Act. A monthly tenant is included in the definition of a non-agricultural tenant and is entitled the rights given under this Act to a non-agricultural tenant. (PLD 1959 SC (Pak) 44 = 11 DLR 401).

S. 2(5): A pucca building consisting of 3 rooms and the land of which the building stood and also the open space lying to the west of the building were let out and the demised leashold is described as consisting of "Nisker lands, etc., and the pucca building" for a term of two years with the option of one renewal. The leassee failed to exercise the option of renewal and continued to hold the tenancy as monthly tenants. The plaintiffs determined the tenancy by 15 Day's notice to quit after the expire of the last day of the month and filed a suit for ejectment.

The East Bengal Non-Agricultural Tenancy Act came into force during the pendency of the appeal.

Sections 2 (5 7, (89), 90: Protective provision of the Act as against eviction when can (or cannot) be invoked. 12 years possession under this Act explained Possession after the suit cannot be counted-date of commencement of the Act is the date of the commencment of the suit.

Definition of non-agricultural tenant was introduced for the first time in the Act (XXIII of 1949) giving the tenants' right in the land to his successor-in-interest and since it was not in the Act IX of 1940 where the definition of tenant only refers to the tenants and not his heirs and the Act of 1949 not being in-force at the time when T. died. Therefore, the defendant cannot be treated as successor-in-interest within the definition of non-agricultural tenant under Act XXIII of 1949.

After the death of T in 1942, the defendant continued to be in possession of the disputed non-agricultural land; but that does not protect him as he has not possessed it as tenant nor completed 12 years before the institution of the suit. nor can be taken the possession of his father to his possession for completing 12 years.

They possess the land during the pendency of this suit up to this stage but the period of his possession after the institution of this suit cannot be taken into consideration as nowhere the East Bengal Non-Agricultural. Tenancy Act of 1949 Provides that even if such a tenant did not complete 12 years possession before the institution of the suit but completed 12 years possession during the pendency of the suit, appeal or execution proceeding pending at the time of commencement of the Act, he can count upon that period of his possession or any portion thereof after the suit in calculating 12 years. The material point of time for computation of the period of 12 years is the date of institution of the suit as has been held in the case reported in 9 DLR 159, that as a rule, the date of commencement of Act, shall be taken to be the date of institution of the suit as if the Act was in force at that time.

Therefore, the defendant's possession after the institution of this suit is immaterial for the purpose of protection under the Act of 1949 (13 DLR 334).

CHAPTER II

Classes of non-agricultural tenants.

3. Classes of non-agricultural tenants.- (1) There shall be, for the purposes of this act, the following classes of non-agricultural tenants, namely :-

(a) tenants, and

(b) under-tenants.

(2)"Tenant" means a person who has acquired from a proprietor or a tenure holder a right to hold non-agricultural land for any of the purposes provided in this act, and includes also the successors-in-interest of persons who have acquired such a right.

(3) "Under-tenant" means a person who has acquired a right to hold non-agricultural land, for any of the purposes provided in this act either immediately or mediately under a tenant and includes also the successors-in-interest of persons who have acquired such a right.

4. Purposes for which non-agricultural tenant may hold non-agricultural land.- A non-agricultural tenant may hold non-agricultural land for -

(a) homestead or residential purposes;

(b) manufacturing or business purposes; or

(c) religious or other purposes.

5. Tenancies held by a non-agricultural tenant.- A non-agricultural tenant shall be deemed to hold any non-agricultural land -

(a) for homestead or residential purposes if such tenant is entitled, under the terms of any agreement between himself and the landlord to use or is actually using such land for homestead or residential purposes;

(b) for manufacturing or business purposes if such tenant is entitled, under the terms of any agreement between himself and landlord, to use or is actually using such land for carrying on therein any commercial or industrial enterprise or any trade or business; and

(c) for religious or other purposes if such tenant is entitled, under the terms of any agreement between himself and landlord, to use or is actually using such land for a religious purpose or for any purpose not connected with agriculture or horticulture other than -

(I) the purposes specified in clauses (a) and (b), and

(II) the exercise of any forest rights or rights over fisheries or rights to minerals in such land.

CHAPTER III

Tenants

6. Manner of use of non-agricultural land.- (1) A tenant holding non-agricultural land may use such land in any manner which is not inconsistent with any of the purposes for which non-agricultural land may be held under this act and which does not materially impair the value of such land.

(2) A tenant holding non-agricultural land comprised in any tenancy to which the provisions of section 7 or section 8 apply shall be entitled -

(a) to erect any structure including any pucca structure;

(b) to erect a mosque, a temple or any other place of worship;

(c) to dig any tank; and

(d) to plant, enjoy the flowers, fruits and other products of, and fell and utilise or dispose of the timber of, any tree on such land.

(3) A tenant holding non-agricultural land comprised in any tenancy to which the provisions of section 9 apply shall be entitled -

(a) to erect any structure other than a pucca structure;

(b) to plant, and enjoy the flowers, fruits and other products of, any tree, and

(c) to fell, and utilise or dispose of the timber of, any tree planted by him on such land.

7. **Incidence of certain tenancies.**- Notwithstanding anything contained in any other land for the time being in force or in any contract -

(1) if any non-agricultural land has been held with or without any lease having been entered into by the landlord and the tenant from before the commencement of the Transfer of Property Act, 1882, or if the origin of any tenancy is unknown, or

(2) if the non-agricultural land comprised in any tenancy which has been or is created after the commencement of the Transfer of Property Act, 1882, has been held for a period of not less than twelve years without any lease in writing, or

(3) if any non-agricultural land has been held under a lease in writing for a period of not less than twelve years but no term is specified in such lease, or

(4) if any non-agricultural land held under a lease in writing for a period specified therein continues to be held after the expiration of the time limited by such lease and the total period for which such land is so held is not less than twelve years, or

(5) if the landlord has allowed pucca structures to be erected on any non-agricultural land held under a lease in writing for a period specified therein whether such structure have been erected -

(a) before the expiration of the said period, or

(b) where such non-agricultural land continues to be held with the express or implied consent of the landlord after the expiration of the said period, during the period such non-agricultural land so continues to be held, then -

(i) the tenant holding the non-agricultural land comprised in such tenancy shall not be ejected by his landlord from such land except on the ground that he has used such land in a manner which renders it unfit for use for any of the purposes specified in section 4;

(ii) [1][subject to the provisions of section 91 of the East Bengal State Acquisition and Tenancy Act, 1950, the interest] of the tenant in the non-agricultural land comprised in such tenancy shall, in the case where such tenant dies intestate in respect of such interest, be transmitted by inheritance in the same manner as his other immovable property:

Provided that in any case in which under the law of inheritance to which such tenant is subject, his other property goes to the state, his interest in such land shall be extinguished, and

(iii) the non-agricultural land comprised in such tenancy or a share or a portion thereof together with the interest of the tenant therein shall, subject to the provisions of this act, [2][and of section 90 of the East Bengal State Acquisition and Tenancy Act, 1950] be capable of being transferred and bequeathed in the same manner, and to the same extent as his other immovable property.

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1. The words within square brackets were substituted for the words "the interest" by E.P. Ord. IX of 1967.

2. The words, figures and commas within square brackets were inserted after deleting comma after the words "this Act" by E.P. Ord. IX of 1967.

Comments

Before commencement of this Act, tenancy right in a non-agricultrural land was governed by the transfer of property Act. 1882 wherein the position of a tenant was that of a tenant-at-will; his interest in the suit land was not transferable, nor heritable, nor was it capable of being bequeathed, such rights were conferred on a non-agricultural tenant, for the first time, under section 7 of the Non-Agricultural Tenancy Act 1949; under this section certain classes of persons holding non-agricultural land by lease were given non-ejectable right in view of his ejara kabuliyat followed by continuous possession for a period of twelve years prior to October 1949 (42 DLR (AD) 289).

"Ijara" right is not a tenancy right and under an "Ijara" kabuliyet no tenancy is created. But the matter may be different if the Ijara right is renewed and the Ijara holder continues in possession for an indefinite period. Ijara created in 1926 by the original owner for a period of five years; but on expiration of this period the Ijara holder is found to have continued when the land was exchanged in 1936, and even after the exchange, he is found to have continued in possession of the land for a few years more-the original Ijaradar was in possession of the land upto 1938-39 A.D- Ijara kabuliyat read with other papers show that though initially an Ijara or temporary lease was intended, it ripened into some sort of under-tenancy because of continous possession, and as the land was used for non-agricultural purpose e.g. as a residential hut, it was governed by the Transfer of property Act at that time (42 DLR (AD) 289).

"2(5) Non-agrucultural tenant means person who holds non-agrucultural land under another person with consent of that person and is, or but for a special contract would be, liable to pay rent to such person for that land and also includes the successors-in-interest of the former but does not include any person who holds any such land on which any premisses occupied by such person are situated if such premises have been erected, or are owned by the person to whom such occupier is or but for a special contract would be, liable to pay rent for such occupation:

Explanation- In this clauses "premises" mean any building such as a house, manufactory, warchouse, stable, shop or hut whether contructed of masonry, bricks, concrets, wood, mud metal or any other material whatsoever and includes any land appertaining to such building."

The said definition will apply prospectively so as to include the succesors-in-interest of tenants. When the appellant's father died in 1939, no existing law conferred the status of tenants upon the successors-in-interest of tenants. Even the Bengal Act. No. IX of 1940 did not do so. If the appellant and the other heirs of Raj Kumar continued to occupy the suit land after Raj Kumar's death in 1939, they could only be treated as trespassers, not as tenants. That is why the landlords sued them for eviction as trespassers. The protection of section 88 is not available to the appellant because on the date of coming into force of the Non-Agrigultural Tenancy, 1949 the appellant was not holding any land as a tenant. Nor is the benefit of section 7(2) available to the appellant because the non-agricultural land which he was holding since 1939 was not comprised in any tenancy'. The question of continuing 12 years from 1934 does not arise at all. With the death of Raj Kumar in 1939 his successors-in-interest became simply trespassers (42 DLR AD 154 (157).

Continuous occupation of the premises for over 12 years by the tenant did not bring him within the category of "non-Agricultural tenants" and as such the protection under section 7 is not available to him (36 DLR (AD) 48).

Suit for eviction was instituted on 21.5.1946 before the statutory period of twelve years had been completed. It was contended in second appeal that as the tenant had continued in possession and more than 12 years had elapsed since the beginning of the tenancy, he was entitled to protection.

Held: The date that should be taken for the purpose of adjudication will be the date of the institution of the suit: 12 year not having been completed on the 21st May, 1946, the date on which the suit was instituted, the tenant is not entitled to protection against eviction available to a person within 12 years, possession under Section 7 of the Act (9 DLR 159 (D. B.).

The tenant sought protection under section 7 (4) of the East Bengal Non-Agrucultural Tenancy Act against an ejectment suit by the landlord. The tenancy in question came into exixtence on 28.1.38 and the Act came into force on 20.10.49 that is 12 years were not complete between the date when the tenancy came into being and on 20.10.49 when Act of 1949 came into force.

Held: In veiw of the provision of section 89-A of the Act. The tenant not having completed 12 years between these two dates, he cannot resist the landlords suit for ejectment (10 DLR 472).

Successor in interest in possession of land, if and when can acquire tenancy right.

T, a non-agrigultural tenant took settlement of the land in suit for residential purposes on 16.9.27 at a rental of Rs. 30/- per annum.

He died about the year 1942, leaving his son, the defendant in possession of the land. The landlord Plaintiff instituted suit for ejectment of the defendant from the suit land on the ground that the latter was a trespasser. During the pendency of this suit the E. B. Non-Agricultural Tenancy Act, 1949 came into force and the defendent sought protection against his ejectment under provision of this Act.

Held: At the time when T. died he did not acquire any interest in the land of tenancy as contemplated in section 7(4) of the Act and therefore, his son the defendant does not acquire the rights which has been conferred by section 7 (4). (13 DLR. 334).

8. Renewals of lease of tenancies held for not less than twelve years and succession to, and transfer of such tenancies.- (1) Notwithstanding anything contained in any other law for the time being in force or in any contract, where any non-agricultural land is held under a lease in writing for a term of not less than twelve years specified in such lease, the tenant holding such land shall, on the expiration of the period so specified, be entitled to the renewal of such lease for perpetuity on such fair and reasonable rent as may be 2[determined under Chapter XIV of the East Bengal State Acquisition and Tenancy Act, 1950]:

Provided that no premium or salami shall be payable in respect of such renewal.

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(3) A tenant holding non-agricultural land comprised in a tenancy to which the provisions of sub-section (1) apply shall not be ejected by his landlord from such land during the term specified in the lease, nor at any time after the tenant has exercise his right of renewal, except on the ground that he has used such land in a manner which renders it unfit for use for any of the purposes specified in section 4.

2. The words within square, brackets were substituted for the words "agreed upon between the landlord and such tenant, ibid.

3. Sub-section (2) was omitted, ibid.

(4) The interest of the tenant in any non-agricultural land held under a lease to which the provisions of sub-section (1) apply shall, during the term specified in the lease, or where the tenant has exercised his right of renewal, at any time thereafter -

(i) in the case where such tenant dies intestate in respect of such interest, 1[be, subject to the provisions of section 91 of the East Bengal State Acquisition and Tenancy Act, 1950, transmitted] by inheritance in the same manner as his other immovable property:

Provided that in any case in which, under the law of inheritance to which such tenant is subject, his other property goes to the state his interest in such land shall be extinguished; and

(ii) subject to the provisions of this Act 2[and of section 90 of the East Bengal State Acquisition and Tenancy Act, 1950], be capable of being transferred and bequeathed in the same manner and to the same extent as his other immovable property.

9. **Incidents of non-agricultural tenancies held for less than twelve years.**- (1) Notwithstanding anything contained in any other law for the time being in force or in any contract, if any non-agricultural land has been held for a term of more than one year but less than twelve years -

(a) without a lease in writing, or

(b) under a lease in writing for a term of more than one year and less than twelve years to which the provisions of clause (5) of section 7 do not apply, or

(c) under a lease in writing but no term is specified in such lease,

then the tenant holding such non-agricultural land shall be liable to ejectment on one or more of the following grounds and not otherwise, namely :-

(i) on the ground that he has used such land in a manner which renders it unfit for use for any of the purposes specified in section 4;

(ii) on the ground that the term of the lease has expired in the case of tenancies of the class specified in clause (b);

(iii) on the ground that the tenancy has been terminated by the landlord by six months' notice in writing expiring with the end of a year of the tenancy served on the tenant in the prescribed manner in the case of tenancies of the class specified in clause (a) :

Provided that a tenant shall not be liable to ejectment on the ground specified in clause (iii) except on payment of such reasonable compensation on account of the cost of removal of any structure erected or of any improvement effected on such land at the expense of the tenant or on other accounts not being the value of the land as may be [3][determined by the Deputy Commissioner in the prescribed manner].

(2) The interest of the tenant in any non-agricultural land to which the provisions of sub-section (1) apply shall -

1. The words, commas and figures within square brackets were substituted for the words 'be transmitted' by E.P. Ord LX of 1967.

2. The words, figures and comma within square brackets were inserted after the words 'this act,' ibid.

3. The words within square brackets were substituted for the words 'agreed upon between the landlord and the tenant or if they do not agree, as may be determined by the Court on the application of the landlord or such tenant' by E.P. Ord. IX of 1967.

(i) in the case where such tenant dies intestate in respect of such interest, [1][be, subject to the provisions of section 91 of the East Bengal State Acquisition and Tenancy Act, 1950, transmitted] by inheritance in the same manner as his other immovable property :

Provided that in any case in which under the law of inheritance to which such tenant is subject his other property goes to the state, his interest in such land shall be extinguished; and

(ii) subject to the provisions of this act [2][and of the provisions of section 90 of the East Bengal State Acquisition and Tenancy Act, 1950,] be capable of being transferred and bequeathed in the same manner and to the same extent as his other immovable property.

9A. Computation of the period of possession.- In computing under this Chapter the period for which any non-agricultural land has been held by a tenant, he shall be entitled to tack to the length of his possession any periods during which his predecessors-in-interest were in posession of the land, provided that there is no break between the periods to be tacked.

Comments

S. 9 (1) (iii) : J Ejectment suit-15 days' notice.

Where a non-agricultural land is held by a non-agricultural tenant as a monthly tenant, the provisions of section 106 of the Transfer of Property Act will apply and the tenant will be entitled to 15 days. notice for the purpose of suit for ejectment. (1955) 7 DLR 525).

Ejecment suit against a monthly tenant holding land of more than one year but less than 12 years- Tenant entitled to 6 months' notice. (11 DLR (SC) 401).

10. Special provisions applicable to tenancies for specific religious purposes.- Notwithstanding anything elsewhere contained in this act or in any other law for the time being in force or in any contract, if the non-agricultural land comprised in any tenancy is held specifically for any religious purpose for any period under a lease in writing in which such purpose is specified, then such tenancy shall be deemed to be a tenancy of the class specified in section 7 :

Provided that the tenant holding such land shall not be ejected by his landlord from such land except on the ground that he has used such land for any purpose other than the said religious purpose or has not used the land for the said religious purpose for more than three years.

3[. . . .

1. The words, commas and figures within square brackets were substituted for the words 'be transmitted', ibid.

2. These words were inserted after the words 'this act', ibid.

3. Sections 11,12,13,14 and 15 were omitted by E.P. Ord. IX of 1967.

CHAPTER IV
Under-tenants

16. Application of Chapter.- The provisions of this Chapter shall apply to all under-tenants whether their tenancies were created before or after the commencement of this Act.

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20. **Ejectment of an under-tenant.**- Notwithstanding anything contained in any other law for the time being in force or in any contract an under-tenant shall, subject to the provisions of this act, be liable to ejectment on one or more of the following grounds, and not otherwise, namely :-

(a) on the ground that he has used the non-agricultural land comprised in his tenancy in a manner which renders it unfit for use for any of the purposes specified in section 4;

(b) on the ground that the term of his lease has expired when he holds the non-agricultural land under a written lease :

Provided that in the case where any non-agricultural land is held by an under-tenant without a lease in writing or under a lease in writing but no term is specified in such lease, it, shall be also lawful for his landlord to eject him from such land after having given him six months notice in writing expiring with the end of a year of the tenancy, and on payment of such reasonable compensation as may be [2][determined by the Deputy Commissioner in the prescribed manner].

21. **Other incidents of tenancies of under-tenants.**- The interest of an under-tenant in any non-agricultural land shall -

(a) in the case where such under-tenant dies intestate in respect of such interest, [3][be, subject to the provisions of section 91 of the East Bengal State Acquisition and Tenancy Act, 1950, transmitted] by inheritance in the same manner as his other immovable property :

Provided that in any case in which under the law of inheritance to which such under tenants is subject his other property goes to the State, his interest in such land shall be extinguished; and

(b) subject to the provisions of this Act [4][and of the provisions of section 90 of the East Bengal State Acquisition and Tenancy Act, 1950,] be capable of being transferred and bequeathed in the same manner and to the same extent as his other immovable property.

22. **Special incidents of a permanent tenancy of an under-tenant.**-Nowithstanding anything contained in any other law for the time being in force or in any contract, where the conditions referred to in clauses (a), (2), (3), (4) or (5) of section 7 or section 10 are fulfilled in relation to the tenancy of an under-tenant or where any non-agricultural land is held by an under tenant under a lease in writing for a term of not less than twelve years specified in such lease, such under tenant shall have as regards his immediate landlord all the rights and liabilities of a tenant as set forth in section 7, section 8 or section 10, as

1. Sections 17,18 and 19 were omitted, ibid.
1. See footnote 1 on page 8 ante.
2. See footnote 2 on 8 page 3, ante
3. See foot note 3 on page 8, ante.

the case may be, and the provisions of [1][section 6] shall apply, and the provisions of [2][section 20] in so far as they are inconsistent with the provisions of this section, shall not apply, to such undertenant.

CHAPTER V

Provisions as to transfer of non-agricultural land

23. Manner of transfer of non-agricultural land and notices to landlords.- (1) Every transfer of non-agricultural land held by a non-agricultural tenant or of any portion or share thereof shall, except in the case of a bequest or a sale in execution of a decree or of a certificate signed under the Bengal Public Demands Recovery Act, 1913, be made by registered instrument, and a Registering Officer shall not accept for registration any such instrument unless the sale price or, where there is no sale price, value of the land or portion or share thereof transferred is stated therein, and unless it is accompanied by -

(a) a notice giving the particulars of the transfer in the prescribed form, together with the process fee prescribed for the service thereof on the landlord who is not a party to the transfer, and

(b) such notices and process fees as may be required by sub-section (4).

(2) In the case of a bequest of such land or portion or share thereof, no court shall grant probate or letters of administration until the applicant files a notice similar to, and deposits a process fee of the same amount, as, that referred to in clause (a) of sub-section (1).

(3) A court or Revenue officer shall not confirm the sale of such land or portion or share thereof put to sale in execution of a decree [illegible] the Bengal Public Demands Recovery Act, 1913, and no court shall make a decree or order absolute for foreclosure of a mortgage of such alnd or portion or share thereof until the purchaser or the mortgagee, as the case may be, files a notice similar to and deposits a process fee of the same amounts as that referred to in sub-section (1).

(4) If the transfer of a portion or share of such land be one to which the provisions of section 24 apply there shall be filed notices giving particulars of the transfer in the prescribed form together with process fees prescribed for the service thereof on all co-sharer tenants of such land who are not parties to the transfer.

[3][(5) The court, Revenue officer or Registering Officer, as the case may be, shall serve, in the prescribed manner, the notices referred to in the preceding sub-section :

Provided that the service of such a notice shall not operate as an admission of the amount of rent or the area of such land by the landlord or by any co-sharer tenant of such land on whom such notice is served or be deemed to constitute an express consent of the landlord or such co-sharer tenant to the division of the tenancy or to the distribution of the rent payable in respect thereof :

Provided further that, if a transfer is subsequently set aside or modified by a competent authority in any suit, appeal or other proceedings to which the landlord was not a party, the authority before whom the appropriate suit or proceedings was first initiated shall transmit a copy of such order to the landlord.

1. The word and figure within square brackets were substituted for the words and figures 'sections 6 and 11 to 15' by E.P. Ord. IX of 1967.

2. The word and figure within square brackets were substituted for the words and figures 'sections 18, 19 and 20', ibid.

3. Sub-section (5) was substituted for the original sub-section by E.P. Ord. IX of 1967.

Comments

The provisions of Non Agricultural Tenancy Act is not attracted to oral gift of non agricultural land held by a tenant directly under the Government long before the coming into force of the said Act. If the property is non-agricultural tenency it would be hit by sec 23 of the Act (1983 BLD (AD) 45)

see 23 of Act XXIII of 1949 has no application in case of oral transfer of land by way of gift with structures threron inter vivos (33 DLR 62)

24. **Power of the co-sharer or the immediate landlord of transfer or to purchase.**- [1][(1) If a portion or share of the non-agricultural land held by a non-agricultural tenant is transferred, one or more co-sharer tenants of such land may, within four months of the service of notice issued under section 23 and, in case no notice had been issued or served, then within four months from the date of knowledge of such transfer, apply to the court for such portion or share to be transferred to himself or to themselves, as the case may be].

(2) The application under subsection (1) shall be dismised unless the applicant at the time of making it deposits in court the amount of the consideration money or the value of 2[the portion or share of the property] transferred as stated in the notice served on the applicant under section 23 together with compensation at the rate of five percentum of such amount.

(3) If such deposit is made, the court hall give notice to the transferee to appear within such period as it may fix and to state what other sums he has paid in respect of rent for the period after the date of transfer or in annulling encumbrances on the property and also what other amounts, if any, have been spent by him, between the date of the transfer and the date of service of the notice of the application, in erecting any building or structure or in making any other improvement in 2[the portion or share of the property] transferred. The court shall then direct the applicant including any person whose application under sub-section (4) is granted, to deposit within such period as the Court thinks reasonable such amount as the transferee has paid or spent on these accounts together with interest at the rate of six and a quarter per centum per annum with effect from the date on which the transferee made such payments or spent such amounts :

Provided that if the correctness of any amount claimed to have been paid or spent by the transferee on any such account is disputed by any applicant the court shall enquire into such dispute and, after giving the transferee an opportunity of being heard, determine the amount actually paid or spent by the transferee on any such account and shall then direct the applicant to deposit the amount so determined with interest at the rate of six and quarter per centum per annum as aforesaid within such period as the court thinks reasonable.

(4) (a) When an application has been made by one or more co-sharer tenants under sub-section (1) any of the remaining co-sharer tenants including the transferee, if one of them, may within the period of four months referred to in the said sub-section or within one month of the service of notice of the application, whichever is later, apply to join in

1. Sub-section (1) of section 24 was substituted by E.P. Ord. IX of 1967.

2. The words within square brackets were substituted for the words 'the property or the portion or share thereof', ibid.

the said application, and any co-sharer tenant who has not applied under sub-section (1) or has not applied to join under this sub-section, shall not have any further right to purchase under this section.

(b) Such application to join as a co-applicant shall be dismissed unless within such period as the court may fix, the applicant deposits in Court for payment to the applicant under sub-section (1), such sum, as the Court shall determine as the share to be paid by him for the purposes of sub-section (2).

(c) If such deposits required under sub-section (2) or clause (b) of sub-section (4), as the case may be, and under sub-section (3) are made [1]**** the court shall make an order allowing the application and directing that the deposits made under sub-sections (2) and (3) shall be paid to the transferee or to such persons as the Court thinks fit [2][.]

[2]* * * * *

(6) Notwithstanding anything contained in any other law for the time being in force the Court shall, if the applicant under subsection (1) or any person whose application under sub section (4) is granted disputes the correctness of the amount of the consideration money as stated in the notice issued under section 23, inquire into such dispute before making an order under sub section (5) and after giving the transferee an opportunity of being heard determine for the purposes of this section the amount of the consideration money which the transferee has actually paid for the transfer of [3][the portion or share of the property] and the amount so determined shall be deemed to be the consideration money referred to in sub section (2) and where the amount of the consideration money has been so determined the deposit made under that sub-section shall for the purpose of sub section (5) be the amount so determined together with the compensation at the rate of five per centum of such amount.

(7) In making an order under sub-section (5) in favour of more than one co-sharer tenant, the Court may apportion the property comprised in the portion or share transferred among the applicants in such manner as it deems equitable after taking existing possession into consideration; the Court shall so apportion the said property or portion thereof on the request of any applicant and, in this case, may require the applicant who makes such request to deposit, within such period as the Court may fix, such further sums as the Court considers necessary for equitable distribution among the remaining applicants :

Provided that no apportionment order under this sub section shall operate as a division of the tenancy.

(8) From the date of making of the order under sub section (5) -

[4][(i) the rights, title and interest in the share or portion of the non-agricultural land accruing to the transferee from the transfer shall, subject to any order passed under sub section (7), vest free from all encumbrances, which have been created after the date of

1. The words, commas, brackets, and figures 'and in the case where the application is made by the immediate landlord, the Court is satisfied that the conditions referred to in sub-section (1) have been fulfilled' were omitted by E.P. Ord. IX of 1967.

2. The full stop was substituted for the colon at the end of sub-section (5) and thereafter the proviso was omitted, ibid.

3. The words within square brackets were substituted for the words 'the property or the portion or the share thereof, as the case may be' by E.P. Ord IX of 1967.

4. Clause (i) was substituted for the former clause (i), ibid.

transfer, in the co-sharer tenant whose application to purchase has been allowed under sub-section (5)]'

(ii) the liability of the transferee for the rent due from him on account of the transfer shall cease, and

(iii) the Court, on further application of such applicant, may place him in possession of the property vested in him.

(9) An appeal from any order of a Court under this section shall lie to the Civil Appellate Court having jurisdiction to entertain such appeals.

(10) Nothing in this section shall take away the right of pre-emption conferred on any person by Muhammadan Law.

(11) Nothing in this section shall apply to -

(a) a transfer to a co-sharer in the tenancy whose existing interest has accrued otherwise than by purchase; or

(b) a transfer by exchange, 1* or partition, or

(c) a transfer by bequest or gift (including heba but excluding heba-bil-ewaz for any pecuniary consideration) in favour of the husband or wife of the testator or the donor or of any relation by consanguinity within three degrees of the testator or donor, or

(d) a wakf in accordance with the provisions of the Muhammadan Law, or

(e) a debuttor or any other dedication for religious or charitable purposes without any reservation of pecuniary benefit for any individual.

Explanation : A relation by consanguinity shall, for the purposes of this sub section, include a son adopted under the Hindu law.

Comments

It has been contended that the pre-emptors after their purchase of 22.50 decimals of land from the original owner field an application before the Revenue officer for seperation of their jama which ended in an order seperating the jama whereupon the two parties paid rents seperately. If this is a fact, then, certainly the pre-emptors ceased to be co-sharers and are debarried from claiming pre-empion (37 DLR (AD) 213).

In a mutation for split up of a jama notice of the mutation case not having been served on the co-sharers and mutation been effected behind their back in law that is not valid spletting up of the jama and as such the co-sharors have not lost their right of pre-emption under section 24 of Act XXIII 1949 (33 DLR (AD) 324)

Limitation with regard to an application for pre-emtpion under section 24 of the Non-agricultural Tenancy Act starts from the date of registration of the sale deed (37 DLR (AD) 213).

"Non-agricultural Land" appearing in the Non-agricultural Tenancy Act and holding in the State Acquisition and Tenancy Act - Right of pre-emption is not extinguished by mere partition but by a partition of the tenancy itself (40 DLR 466).

A Municipality is not a rent receiver within the meaning of Non-agricultural Tenancy Act. A person holding land under a municipality a tenant under it and liable to pay rent (39 DLR (AD) 16).

1. The word 'sub-lease' was omitted by E.P. Ord. IX of 1967.

The ingredients of section 24 of the Non-Agricul tural Tenancy Act and those of section 96 of the S.A.T Act are different, some of these distinctions are that while section 96 confers right of pre-emption on the holder of land contiguous to the lend transferred, no such holder of land can exercise the right of pre-emption under section 24 of the Non-Agricultural Tenancy Act which merely confers the right of pre-emption on a non-agricultural, tenant in respect of non-agricultural land. Moreover the expression 'holding' in section 96 which is not to be found in section 24 of N. A. T. Act also mekes for a meaningful distinction.

Section 24 of the Non-Agricultural tenancy Act has not been rendered ineffective nor impliedly repealed so as to compel the owner of any land falling within the municipal area to prefer an application v/s 24 of the S. A. T. Act (33 DLR (AD) 323)

Section 24 of the Non-agricultural Tenancy Act provides for filing application for pre-emption in respect of non-agricultural land within a Municipal Area. This section has got no manner of application to case of agricultural land situated outside the Municipal Area (39 DLR 233.; 33 DLR (AD) 323)

Contiguous owner cannot claim pre-emption (39 DLR 233).

Co-sharer need not be impleaded in an upplication under section 24 of the N. A. T. Act (37 DLR 154; 28 DLR (AD) 7).

Nature of the land is determined by the purpose for which it is initially taken. Entry in record of right that the land consists of hut, garden and pond can not be taken as showing that the initial purpose was non-agricultural (39 DLR 233; 21 DLR 633).

Heir of Transferee added in a pre-emption case after the period of limitation. Pre-emption claim as against such heir barred (32 DLR 68).

partial pre-emption can not be allowed under section 24 of Non-Agricultural Tenancy Act (32 DLR 68).

The validiy of a mutation order can not be allowed to be raised in a pre-emption proceeding but the validity of the order passed during pendency of the pre-emption case may be raised (1987 BLD (AD) 122; BCR 1987 AD 199)

Section 24 and not section 96 of state Acquisition and tenancy Act is applicable for pre-emption of land falling within Municipal area (1981 BLD (AD) 269); 1981 BCR (AD 194).

A co-sharer in the land transferred and not a cosharer in the tenancy is entitled to pre-empt under section 24 of the N. A. T. Act. (37 DLR 137).

Transfer of portion or share of Non-Agricultural land to a stranger opens right of pre-emption to the Co-share. But no such right given where land is transferred to a co-sharer in the tenancy. Respondents not being co-sharer in the land. transferred (though they are co-sharers in the tenancy) their application for pre-emption for land transferred must fail (35 DLR (AD) 235). The provision of pre-emption in section 24 shall not apply to transfer to a co-sharaer in the tenancy whose existing interest has accrued otherwise than by purchase (35 DLR (AD) 230).

Provisions of order 9, r 13, C.P. Code, to set aside an order passed ex-parte in a proceeding started under section 24 of the Non-Agricultural Tenancy Act. for preemption of non- Agricultural land are applicable.(31 DLR 407).

The procedure provided in the Code in regard to suits are applicable in all independent proceedings of original nature. Non-Agricultural Tenancy Act does not

specifically under section 24 of this Act. Section 4 of the Civil procedure Code does not limit or otherwise affect any Special Law; in other owrds, the provisions of the Code of Civil procedure which run counter to a special or local law are excluded. Section 4 of Code does not bar the applicablity of the Code where special law or local law is silent. (31; DLR 407).

Non-agricultural land held by a tenant under the Govt No pre-emption in case of such land allowed. (33 DLR 10).

A nadabipatra being merely a deed of disclaimer disclaiming any interest in the properties transferred by an earlier sale-deed is not itself a deed of transfer and, therefore, no right of pre-emption can be claimed upon the registration of such a deed of nadabipatra. (11 DLR 539).

pre-emption in respect of non-agticultural land is only possible under section 24 of the E.B. Non-agricultural Tenancy Act-provision of section 96 of the E.B.S A.T. Act not applicable to such case (20 DLR 1197).

Suit for pre-emption was framed as one under section 96 of the S. A. T. Act but subsequently it beeng found, having the nature of the land, that pre-emption could be claimed under section 24 of the Non-Agricultural Tenancy Act a prayer for treating the claim us one under sction 24 of the Non-Agricultural Tenancy Act was made before the Heigh Court Division Which court rejected it on the ground that it was a new case altogether.

Held that the prayer ought to have been granted as it is not correct to say that new case has been made such ameudment could also be allowed if no mention of section 24 is made in the plaint (27 DLR (SC) 114)

Sharing the tenancy itself in relation to the land is the crucial test upon which the right of pre-emption is dependent. (16 DLR 77).

Where a right of pre-emption is not exercised by A when a part of the tenancy is transfered to B. It cannot be said that "A" cannot exercise the right when there is a transfer of tenancy to "C" (17 DLR 384 (FB).

The words used in the East Bengal Non-Agricultural Tenancy Act, 1949, are "by the provisions of this Act" and not "under the provisions of this Act" A power to avail oneself of the benefit of the section is a right vested by the provisions of section 24 of the Act. On transference of a portion or share of land by a co-sharer, the right becomes an "accrued right" under the said provisions of section 24. (17 DLR 384 FB).

Sharing the "tenancy" itself in relation to the land is the crucial test upon which the right of pre-emtion is dependent. The position, therefore, resolves itself into this: If a share of portion of a non-agricultural land is sold, then a person can be a co-share tenant, even if he is not a co-possessor (Physically speaking) of the specified land, provided a co-tenancy is established in respect of the land, itself. The Co-tenancy itself must appertain to the disputed land and not to any other land. This is the plain meaning of the words co-sharer tenants of such land. (16 DLR 77 = PLR 1963 Dhaka 1051 (DB).

The right by which the petitioner have claimed pre-emption under section 24 would not be rendered nugatory by the mere transposition of the former superior landlord in respect of the tenancy, by the provincial Government. (16 DLR 77; PLR 1963 Dhaka 1051 (DB).

In the light of the proviso to section 85 (2) of the Act a tenant in respect of a non-agricultural land would not be deprived of a right deposed in him by the provisions of the Act on the only ground of acquistion of superior right in the land by Government. The right vests in a tenant by the provisions of the Act including a right which is immediately enforceable and also a right Which is enforceable in future, on the happening of contingency. (17 DLR 384 (FB).

The word "land" in section 24 of the Est Bengal Non-Agricultural Tenancy Act, 1949 is intended to included structures on the land also if it is also transferred along with land as part and parcel of the land and not separately from the consideration for both is one and the same and in that case the right of preemption will extend upto those structures on the land transferred (PLD 1960 Dhaka 249)

The expression "non-agricultural land held by a non-agricultural tenant" occurring in section 24 of the Non-Agricultural Tenancy Act has been used in the same sense in which the term "holding" has been used in section 26F of the Bengal Tenancy Act and thus refers to the non-agricultural tenancy where of share or portion has been transferred. In other words, the right of pre-emption conferred by the section is confined to the co-sharers in the tenancy comprsing the subject matter of the disputed transfer. A lessee taking settlemernt of some land, even though that may be a portion of tenancy held by this lessor, establishes no connection whatsoenver at all with the remaining portion of that tenancy. The subject matter of his lease becomes a separate and independent unit and represents his 16 annas interest. He has thus no connection with the remaining interest of his lessor and can not, therefore be a co-sharer with respect thereto.(12 DLR 785 = PLD 1961 Dhaka 356).

A suit for specific performance of contract having been decreed and the petetioner being already in possession of his portion of the land on the basis of contract he has acquired a right in law and equity to preempt land transferred (37 DLR 137).

25. Saving as to statements in instruments of transfer where landlord is not a party.- Notwithstanding anything contained in the [1][Evidence Act], 1872, nothing contained in any instrument of transfer to which the landlord is not a party shall be evidence against the landlord of the permanence, the amount or fixity of rent, the area, the transferability or any incident of any tenancy referred to in such instrument.

26. Interpretation.- (1) In this Chapter 'transferee', 'purchase' and 'mortgagee' include their successors-in-interest.

(2) In section 23 -

(a) "transfer" does not include partition [2]* * * or until, a decree or order absolute for foreclosure is made, simple or usufructuary mortgage or mortgage by conditional sale;

(b) 'transferor' includes a person whose interest in any non-agricultural land or portion or share thereof has terminated in the circumstances mentioned in sub-section (2) or sub-section (3) of that section.

26A. [3][**Bar to sublet.**- (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or in any contract, no non-agricultural tenant shall sublet the whole or any part of his tenancy on any terms or conditions whatsoever.

1. The words 'Evidence Act' were substituted for the words 'Indian Evidence Act' by E.P. Ord. XXVIII of 1960.

2. The words 'or a sub-lease' were omitted by E.P. Ord. IX of 1967.

3. Section 26A was inserted after section 26 by E.P. Ord. IX of 1967.

(2) If any tenancy or any part of a tenancy is sublet, in cotravention of the provision of sub-section (1), the interest of the non-agricultural tenant in the tenancy or in that part of the tenancy, as the case may be, shall be extinguished, and the tract, no non-agricultural tenant shall sublet the whole or any tenancy or the part of the tenancy shall vest in the 1[government] from the date of such subletting free from all encumbrances.]

1* . . . . .

2* . . . . .

CHAPTER VIII

Improvements

64. Definition of "improvement."- For the purposes of this Act the term improvements used with reference to a tenancy shall mean any work which adds to the value of the non-agricultural land comprise in the tenancy, which is suitable to such land and consistent with any of the purposes specified in section 4 for which it is being used and which, if not executed on such land, either executed directly for its benefit, or is, after execution, made directly beneficial to it, and subject to the foregoing provisions, shall include the following, namely :-

(a) laying out of passages or roads.

(b) providing open spaces for ventilation,

(c) providing facilities for taking water,

(d) laying out drainage connections,

but shall not include any work executed by a non-agricultural tenant if it substantially diminishes the value of his landlord's property.

65. Rights to make improvements.- (1) Subject to the provisions of sub-section (2), neither the non-agricultural tenant nor his landlord shall, at such, be entitled to prevent the other from making an improvement in respect of the tenancy.

(2) If both the non-agricultural tenant and his landlord wish to make the same improvement the non-agricultural tenant shall have the prior right to make it, unless it affects another tenancy or other tenancies under the same landlord.

3* . . .

66. Collector to decide question as to right to make improvement, etc.- (1) If a question arises between [illegible] and his landlord -

(a) as to the right to make an improvement, or

(b) as to whether a particular work is an improvement, [illegible] may, on the application of either party, decide the question.

1. The word "Government" was substituted by A.P. Act 21 of 1957.

2. Chapters VI and VII were omitted by A.P. Act 21 of 1957.

3. Sub-section (2) of section 65 was omitted by A.P. Ord. IX of 1967.

(2) An appeal, if presented within thirty days from the date of the order appealed against, shall lie to the District Judge from every order passed by the [1][Deputy Commissioner] under sub section(1) and the order passed by the District Judge on such appeal shall be final.

[2]* * * * *

68.Application to record evidence as to improvement.- (1) If any non-agricultural tenant holding any non-agricultural land [3]* * * desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to the [4][prescribed] Revenue-officer [3]*** and such Revenue officer shall thereupon, at a time and place of which notice shall be given to the parties, record the evidence :

Provided that such Revenue officer shall not so record the evidence if he considers that there were no reasonable grounds for the making of the application, or if it appears to him that the subject matter thereof is under inquiry in a Civil Court.

(2) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in every subsequent proceeding between the landlord and the non-agricultural tenant or any persons claiming under them.

CHAPTER IX

Other incidents of non-agricultural tenancies

[5]* * * * *

70. No ejectment except in execution of decree.- No non-agricultural tenant shall be ejected from the tenancy or from any non-agricultural land which he holds except in execution of a decree of a competent Civil Court.

71. Application of the transfer of Property Act, 1882, or other law.- The provisions of the Transfer of Property Act, 1882, and of any other law for the time being in force, in so far as they may be applicable and in so far as they are not inconsistent with the provisions of this Act shall continue to apply to all tenancies to which the provisions of this Act apply.

[6]* * * * *

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1. The words "Deputy Commissioner" were substituted for the word "Collector", ibid.
2. Section 67 was omitted, ibid.
3. The words "or his landlord" and "to whom an application for the registration of such improvement may be made under sub-section (1) of section 67" were omitted respectively by E.P. Ord. IX of 1967.
4. The word "prescribed" was inserted after the words "apply to the" ibid.
5. Section 69 was omitted by E.P. Ord. IX of 1967
6. Chapter X was omitted, ibid.

CHAPTER XI

Judicial Procedure

1* * * * *

75. Relief against forfeitures in certain cases.- A suit for the ejectment of a non-agricultural tenant, on the ground that he has used the non-agricultural land in a manner which renders it unfit for use for any of the purposes specified in section 4, shall not be entertained unless the landlord has served in the prescribed manner, a notice in writing on the non-agricultural tenant -

(i) specifying the particulars misuse complained of, and

(ii) if the misuse is capable of remedy, requiring the tenant to remedy the same,

and the tenant has, where the misuse is capable of remedy, failed within a reasonable time from the date of the service of the notice to remedy the misuse.

2* * * * *

77. Delivery of possession of land sold for arrears of rent which has any structure erected on it by a non-agricultural tenant.- Where a non-agricultural tenant or his predecessor-in-interest has erected any structure on any non-agricultural land held by such tenant and such land is sold in execution 3* * * * of a certificate signed under the Bengal Public Demands Recovery Act, 1913, for arrears of rent due in respect of such land, the purchaser shall be entitled to obtain delivery of possession of land sold by the removal of such structure :

Provided that the judgment-debtor shall be allowed reasonable time by the Court to remove such structure from the property sold before the possession of such property is delivered to the purchasers :

Provided further that it shall be open to the purchaser to obtain possession of such land together with such structure on payment of such compensation for the value of such structure to the judgment debtor as may be agreed upon between the purchaser and the judgment debtor or, in the case where they do not agree, as may be determined by the Court on application by the purchaser, and, on payment of such compensation, the interest of the judgment debtor in such structure shall vest absolutely in the purchaser.

4* * * * *

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1. Section 73 and 74 were omitted, ibid.
2. Section 76 was omitted, ibid.
3. The words 'of a decree or' were omitted by E.P. Ord. IX of 1967.
4. Sections 78, 79, 80,81,82, 83 and 84 were omitted, ibid.

CHAPTER XII

Miscellaneous

85. Bar to application of Act to certain lands and to certain cases.- (1) Nothing in this Act shall apply to -

(a) any land vested in, or in the possession of -

(i) a port authority of a port, or

(ii) a railway administration, or

(b) any lease in respect of any forest rights or rights over fisheries or rights to minerals in any non-agricultural land, or

(c) any land acquired under the Land Acquisition Act, 1894, or under any other law, for the use of any department of the 1[Government], or

(d) any other land in the possession of the 1[Government], or

(e) any land held under a public wakf or a trust for public purpose.

(2) Nothing in this Act shall apply to any non-agricultural land held by a tenant under the 1[Government].

Provided that the right vested in a tenant by the provisions of this Act shall not be divested by the acquisition of the superior right only in the land by the Government.

85A. **2[Appeal].** An appeal against an order passed by the Deputy Commissioner determining compensation under the proviso to sub section (1) of section 9 or the proviso to section 20 shall, if presented within thirty days of such order, lie to the District Judge.]

86. **Certain contracts not to affect the provisions of the Act.**- Nothing in any contract between a landlord and a non-agricultural tenant made before or after the commencement of this act shall take away or limit the rights of such tenant as provided for by this act, and any contract which is in contravention of the provisions of this section or which is inconsistent with, or purports to alter the effect of, any of the provisions of this Act, shall, to the extent of such contravention or inconsistency or to the extent it purport to alter such effect, be void and without effect.

87. **Jurisdiction in proceedings under this Act.**- When under this Act a Court is authorised to amke an order on the application of a landlord or a non-agricultural tenant, the application hall be made to the Civil Court which would have jurisdiction to entertain a suit for possession of the non-agricultural land comprised in the tenancy in connection with which the application is made.

88. **Application of the provisions of the Act to all pending suits, appeals and proceedings and unexcuted decrees, for ejectment.**- The provisions of this Act shall apply to all suits, appeals and proceedings including proceedings in execution for the ejectment of a non-agricultural tenant which are pending at the date of the commencement of this Act and also to all decrees passed for the ejectment of a non-agricultural tenant which have not been executed and are not barred by limitation and in respect of which no proceedings in execution are so pending, and the tenants against whom such suits, appeals or proceedings are so pending or such decrees have been passed shall not be liable to be ejected on any ground except under the provisions of this act.

1. The word Government was replaced by the words Central or Provincial Government by P.O. 48 of 1972.

2. Section 85A was inserted after section 85 by E.P. Ord. IX of 1967.

89. Saving of limitation.- In computing the period provided by any law for the time being in force for the execution of a decree for ejectment which was stayed under the Bengal Non-Agricultural Tenancy (Temporary Provisions) Act, 1940, or for the institution of a suit for the ejectment of non-agricultural tenant, the period during which the said Act continued in force hall be excluded.

89A. **Calculation of the period of possession.**- In calculating for the purposes of this Act the period for which any non-agricultural land has been held by any non-agricultural tenant, the period for which such tenant has held such land while the Bengal Non-Agricultural Tenancy (Temporary Provisions) Act, 1940 has been in force shall be included.

90. **Repeal of Bengal Act IX of 1940 and Assam Act X of 1947.**- (1) The Bengal Non-Agricultural Tenancy (Temporary Provisions) Act, 1940, and the Sylhet Non-Agricultural Urban Areas Tenancy Act, 1947, are hereby repealed.

(2) All rents settled or orders issued, suits or other proceedings instituted and other things duly done under the Sylhet Non-Agricultural Urban Areas Tenancy Act, 1947, shall, in so far as they are consistent with the provisions of this Act, be deemed to have been respectively settled, issued instituted or done hereunder.

91. Rules.- The [1][Government] may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-

[2]• • • •

[3][(c) the manner of determining compensation referred to in the proviso to sub section (1) of section 9 and in the proviso to section 20;]

(d) the forms of the notices referred to in section 23, and the amount of the process-fees referred to in the said section;

[4]• • • •

[5][(rr) the Revenue officer referred to in sub-section (1) of section 68.]

(s) the manner of service of notice issued under this Act where the mode of such service is not provided in this Act.

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1. The word 'Government' was replaced by the words Provincial Government by P.O. 48 of 1972.
2. Clauses (a) and (b) were omitted by E.P. Ord. IX of 1967.
3. Clauses (c) was substituted for clause (c), ibid.
4. Clauses (e), (f), (g), (h), (i), (j), (k), (l), (m), (n), (o), (p), (q), and (r) omitted, ibid.
5. Clauses (rr) was inserted after clause (r) so omitted by E.P. Ord. IX of 1967.

THE STATE ACQUISITION AND TENANCY ACT, 1950[1]

[16th May, 1951]

An Act to provide for the acquisition by the State of the interests of rent-receivers and certain other interests in land in 2[Bangladesh] and to define the law relating to tenancies to be held under the State after such acquisition and other matters connected therewith.

WHEREAS it is expedient to provide for the acquisition by the State of the interests of rent-receivers and certain other interests in land in Bangladesh and to define the law relating to tenancies to be held under the state after such acquisition and other matters connected therewith;

It is hereby enacted as follows :-

PART I

CHAPTER I

Preliminary

1. Short title and extent.- (1) This Act may be called the 3* * State Acquisition and Tenancy Act, 1950.

(2) It extends to the whole of Bangladesh.

2. Definition.- In this Act, unless there is anything repugnant to the subject or context,-

(1) "cesses" include local rates levied under the Assam Local Rates Regulation, 1879;

(2) "charitable purpose" includes relief of the poor, education, medical relief and the advancement of any other object of general public utility;

(3) "Collector" means the Collector of a district and includes a Deputy Commissioner and such other officers as may be appointed by the 4[Government] to perform all or any of the functions of a Collector under this Act;

(4) "Commissioner" means the Commissioner of State Purchase appointed under sub-section (1) of section 48;

(5) "company" has the same meaning as in the Companies Act, 1913;

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1. For Statement of Objects and Reasons, see Dhaka Gazette, Extraordinary, dated the 6th April, 1948; for Report of Select Committee, see, Dhaka Gazette, Extraordinary, dated the 16th August, 1949, Part IVA, page 547; for proceedings in Assembly, see the proceedings of the meetings of the East Bengal Legislative Assembly held on the 7th April, 1948, 16th and 17th, 21st to 26th, 28th to 30th November, 1st to 3rd, 5th to 10th, 12th and 13th, 15th to 17th and 19th December, 1949, 7th to 10th and 13th to 16th February, 1950.

The Act was extended to those areas of the district of Mymensingh, which were known as the "Partially Excluded Areas" immediately before the coming into force of the constitution which was abrogated by the Presidential Proclamation of 7th October, 1958, with effect from the 16th May, 1951, vide notification No. 4342 L.R., dated the 30th April, 1951 published in the Dhaka Gazette, Extraordinary, dated the 16th May, 1951, Part I, page 400.

The Act with certain exceptions was also extended to certain areas of the excluded areas of Chittagong Hill-tracts, vide notification No. 1728 L.R., dated the 12th November, 1955, published in the Dhaka Gazette Extraordinary, dated 30th November, 1955, Pt. I, page 2015.

2. The words "East Pakistan" were replaced by the word "Bangladesh" by P.O. 48 of 1972.

3. The words "East Bengal" were omitted, ibid.

4. The words "Provincial Government" were replaced by the word "Government" by P.O. 48 of 1972.

(20) "proprietor" means a person owning, whether in trust or for his own benefit, an estate or a part of an estate;

(21) "registered" means registered under any Act for the time being in force for the registration of documents;

(22) "rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant;

(23) "rent-receiver" means a proprietor or a tenure holder and includes a raiyat, an under raiyat or a non agricultural tenant whose land has been let out and also the immediate landlord of a person who holds any land free of rent in consideration of some service to be rendered, but does not include a person in respect of such of this lands, as has been let out, together with any building standing thereon and necessary adjuncts thereto, otherwise than in perpetuity;

(24) "Revenue officer" includes any officer whom the Government may appoint to discharge all or any of the functions of a Revenue officer under this Act or any rules made thereunder;

(25) "signed" includes "marked", when the person making the mark is unable to write his name; it also includes "stamped" with the name of the person referred to;

(26) "succession" includes both intestate and testamentary succession;

(27) "tenant" means a person who holds land under another person and is, or but for a special contract would be, liable to pay rent for that land to that person:

Provided that a person who, under the system generally known as "adhi", "barga", or "bhag" cultivates the land of another person on condition of delivering a share of the produce to that person, is not a tenant, unless -

(i) such person has been expressly admitted to be a tenant by his landlord in any document executed by him or executed in his favour and accepted by him, or

(ii) he has been or is held by a Civil Court to be a tenant;

(28) "tenure" means the interest of a tenure holder or an under tenure holder;

(29) "village" means the area defined, surveyed and recorded as a district and separate village in any survey made by, or under the authority of, the Government, and, where no such survey has been made, such area as the Collector may, with the sanction of the Board of Revenue, by general or special order, declare to constitute a village;

(30) "year" or "agricultural year" means the Bengali year commencing on the first day of Baishakh; and

(31) all words and expressions used in Parts I,II,III and IV of this Act, but not defined in this Act, and used in the

Bengal Tenancy Act, 1885, or in the Sylhet Tenancy Act, 1936, have the same meanings as in those Acts in the respective areas to which those Acts apply.

[2][2A. **Exemption.**- The [3][Government] may, in public interest, exempt, by general or special order, the interests of any local authority in any land or class of lands from acquisition under the provision of this Act.] (VIII of 1885) (Assam Act XI of 1936).

1. The words "Provincial Government" were replaced by the word "Government" by P.O. 48 of 1972.

2. Section 2A was ins. by E.P. Ord. XLIV of 1958, s. 4.

3. The words "Provincial Government" were replaced by the word "Government" by P.O. 48 of 1972.

(i) any land subject either immediately or prospectively to the payment of land-revenue for the discharge of which a separate engagement has been entered into;

(ii) any land subject to the payment of, or assessed with, a separate amount as land-revenue although no engagement has been entered into with the Government for that amount;

(iii) any land which is, for the time being, included under one entry in the Deputy Commissioner's register of revenue-free estates as well as revenue-free lands which are not so included in such register;

(iv) any land, being the exclusive property of Government, of which a separate entry has been made in the general register of revenue-paying and revenue free estate mentioned in Chapter IV of the Assam Land and Revenue Regulation, 1886;

(12) "hat" or "bazar" means any place where persons assemble daily or on particular days in a week primarily for the purposes of buying or selling agricultural or horticultural produce livestock, poultry, hides, skins, fish, eggs, milk, milk products or any other articles of food or drink or other necessaries of life, and includes all shops of such articles or manufactured articles within such place;

(13) "holding" means a parcel or parcels of land or an undivided share thereof, held by a raiyat or an under raiyat and forming the subject of a separate tenancy;

(14) "homestead" means a dwelling house with the land under it, together with any courtyard, garden, tank, place of worship and private burial or cremation ground attached and appertaining to such dwelling house, and includes any out-buildings used for the purposes of enjoiny the dwelling house or for purposes connected with agriculture or horticulture and such lands within well defined limits whether vacant or not, as are treated to be appertaining thereto;

(15) "khas land" or "land in khas possession", in relation to any person, includes any land let out together with any building standing thereon and necessary adjuncts thereto, otherwise than in perpetuity;

(16) "land" means land which is cultivated, uncultivated or covered with water at any time of the year, and includes [1][benefits to arise of land,] houses or buildings and also things attached to the earth, or permanently fastened to anything attached to the earth;

[2][(16a) notwithstanding anything contained in any other law for the time being in force or in any instrument or in any judgment or decree or order of any Court, the definition of 'land' in clause (16) includes and shall be deemed always to have included all fisheries, several or territorial;]

(17) "non-agricultural tenant" means a tenant who holds land for purposes not connected with agriculture or horticulture, but does not include a person holding land together with any building standing thereon any necessary adjuncts thereto under a lease other than a lease in perpetuity.

(18) "notification" means a notification published in the Official Gazette;

[3][(18a) "orchard" mean a garden of fruit-trees grown by human efforts and includes coconut, betelnut and pineapple gardens;]

(19) "prescribed" means prescribed by rules made under this Act;

1. The words and comma, "benefits to arise of land," were ins. by E.B. Act V of 1953, s.3.
2. Clause (16a) was ins. by E.P. Ord. XII of 1960, s.3.
3. Clause (18a) was ins. by E.P. Ord. XLIV of 1958, s.3.

(20) "proprietor" means a person owning, whether in trust or for his own benefit, an estate or a part of an estate;

(21) "registered" means registered under any Act for the time being in force for the registration of documents;

(22) "rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant;

(23) "rent-receiver" means a proprietor or a tenure holder and includes a raiyat, an under raiyat or a non agricultural tenant whose land has been let out and also the immediate landlord of a person who holds any land free of rent in consideration of some service to be rendered, but does not include a person in respect of such of this lands, as has been let out, together with any building standing thereon and necessary adjuncts thereto, otherwise than in perpetuity;

(24) "Revenue officer" includes any officer whom the Government may appoint to discharge all or any of the functions of a Revenue officer under this Act or any rules made thereunder;

(25) "signed" includes "marked", when the person making the mark is unable to write his name; it also includes "stamped" with the name of the person referred to;

(26) "succession" includes both intestate and testamentary succession;

(27) "tenant" means a person who holds land under another person and is, or but for a special contract would be, liable to pay rent for that land to that person:

Provided that a person who, under the system generally known as "adhi", "barga", or "bhag" cultivates the land of another person on condition of delivering a share of the produce to that person, is not a tenant, unless -

(i) such person has been expressly admitted to be a tenant by his landlord in any document executed by him or executed in his favour and accepted by him, or

(ii) he has been or is held by a Civil Court to be a tenant;

(28) "tenure" means the interest of a tenure holder or an under tenure holder;

(29) "village" means the area defined, surveyed and recorded as a district and separate village in any survey made by, or under the authority of, the Government, and, where no such survey has been made, such area as the Collector may, with the sanction of the Board of Revenue, by general or special order, declare to constitute a village;

(30) "year" or "agricultural year" means the Bengali year commencing on the first day of Baishakh; and

(31) all words and expressions used in Parts I,II,III and IV of this Act, but not defined in this Act, and used in the

Bengal Tenancy Act, 1885, or in the Sylhet Tenancy Act, 1936, have the same meanings as in those Acts in the respective areas to which those Acts apply.

[2][2A. **Exemption.**- The [3][Government] may, in public interest, exempt, by general or special order, the interests of any local authority in any land or class of lands from acquisition under the provision of this Act.] (VIII of 1885) (Assam Act XI of 1936).

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1. The words "Provincial Government" were replaced by the word "Government" by P.O. 48 of 1972.

2. Section 2A was ins. by E.P. Ord. XLIV of 1958, s. 4.

3. The words "Provincial Government" were replaced by the word "Government" by P.O. 48 of 1972.

Comments

The distinctive feature of a hat or bazar, as opposed to a number of shops established in a particular place, is that it is a place for assembling persons daily or on particular days in a week for purpose of buying or selling articles of general house-hold use. The setting up of a few shops cannot be described as establishing a hat or bazar (15 DLR 5).

If agricultural or horticultural produce used as food or drink, or any other necessaries of life are sold in a hat and bazar, either daily or on particular days in the week, the aforesaid factum would constitute a hat or bazar within the meaning of the said section 2(12) of the Act (20 DLR 18).

Hat : What is meant by hat.

On analysis of the definition the following are found to be the ingredients of a hat :-

1. It means a place.

2. the place is such where persons assemble daily or on particular days in a week.

3. the purpose of such assembly are primarily buying or selling agricultural or horticultural produce and other commodities.

4. It includes all shops of such articles or manufactured articles within such place (35 DLR 331).

A hat may shift from one place to another bearing the same name and with the assembly of same set of persons. In such a case, in fact and in law, it is a new hat distinct and separate (35 DLR 331).

Right of fishery in a navigable river is not profit arising out of land and cannot therefore be acquired under the Act (11 DLR 145). A "several fishery" is not included within the definition "estate" and "land". Inland fishery falls within the defination of 'estate' and 'land' and as such can be acquired (11 DLR 175)

Right to collect rent is a benefit arling out of land and can therefore be acquired. The right to collect rents or profits from a hat comes within the meaning of the phrase benefit to arise out of land and therefore such right is capable of being acquired (13 DLR 873).

Revenue authority's decision on question of title to land is not binding on a Civil Court. On the question as to who was the owner of the premises the decision of the settlement officer cannot be final and binding on civil Court (20 DLR 627).

If a proprietor or a tenure holder has a raiyat or an under raiyat under him, then the said proprietor or a tenure holder becomes a rent-receiver and with regard to non-agricultural land which has been leased out otherwise than in prepetuity the holder of the land does not become rent receiver (17 DLR 329).

In this country a lease in perpetuity can be created by an express grant to that effect or by a necessary presumption raised by the terms of a grant and by an unambiguous and long possession (17 DLR 329).

30 years lease of non-agricultural land is not a lease in perpetuity as such lease's interest cannot be acquired under section 3 of the Act (11 DLR SC 401).

A proprietor or a tenure bolder, a raiyat and under raiyat or a non-agricultural tenant whose land has been let out is a rent receiver but a person is not a rent receiver in respect of such of his lands as has been let out together with any building standing thereon and necessary adjuncts thereto, otherwise than in perpetuity. (18 DLR 490)

Mutawalli or Shebait holding property for the benefit of a religious or charitable institutions is a rent receiver within the meaning of section 2, clause (23). Mutawallis and Shebaits are proprietors (9 DLR (SC) 21; 22 DLR 376).

Usufructuary mortgagee's interests is an encumbrance and cannot be acquired. The mere fact that a mortgagee is in possession of the mortgaged property by realising rent therefrom will not bring him within the four corners of the Act (9 DLR 174).

Acquisition of any municipal market is only possible under chapter V showing final publication compensation assessment roll under section 44. Where this is not done taking over any municipality hat under a Pourashava under section 20 (2a) is unauthorised and illegal (32 DLR 156). Interest of any 'local authority' is exempt from acquisition under the S. A. T. Act. The Municipality is a local authority (39DLR (AD) 16).

PART II

CHAPTER II

Special provisions for the acquisition of the interests of certain rent-receivers

***3. Acquisiton of the interest of certain rent-receivers and consequences thereof.**- (1) At any time after the commencement of this act, it shall be lawful for the [1][Government] to acquire, by notification *in the official gazette, with effect from such date as may be specified in the notification (hereinafter referred to as the notified date),-

(i) all interests of such of the rent-receivers as may be specified in the notification, in their respective estates, [2][taluks, tenures, holdings or tenancies], as the case may be, in any district, part of a district or local area, and

(ii) all interests of all rent-receivers whose properties are, for the time being, under the management of the Court of Wards under the Court of Wards Act, 1879, in their respective estates, [2][taluks, tenures, holdings or tenancies], as the case may be,

including all their interests in all sub-soil and rights to minerals in such estates, [3][taluks, tenures, holdings or tenancies].

(2) Subject to the provisions of sub sections [3][(4), (5) and (6) of section 20, the [4][Government] may also, simultaneously with or at any time after the publication of a notification under sub section (1) in respect of the interests of any rent receiver in any estate [5][taluk, tenure, holding or tenancy], acquire, by notification in the Official Gazette.

1. The words "Provincial Government" were replaced by the word "Government" by P.O. 48 of 1972.

2. The words and commas "taluks, tenures, holdings or tenancies" were subs. for the words "taluks or tenures" by E.B. Act VI of 1952, s.3.

3. The words, comma, brackets and figures "(4), (5) and (6)" were subs. for the word, brackets and figures "(4) and (5)" by E.P. Ord. XII of 1960, s. 4.

4. The words "Provincial Government" were replaced by the word "Government" by P.O. 48 of 1972.

5. The words and commas "taluk, tenure, holding or tenancy" were subs. for the words "taluk or tenure" by E.B. Act VI of 1952, s.3.

* R/R interests including their respective sub-soil and rights to minerals in their estate, etc, of all the R/Receivers were acquired with effect from 14th April, 1956 under this section as amended by E. B. Ord. II of 1956 in the districts of Rajshahi, Dinajpur, Rangpur, Bogra, Pabna, Kusthia, Khulna, Jessore, Sylhet, Chittagong, Noakhali, Comilla, Faridpur, Bakerganj, Mymensingh and Dhaka vide Notification Nos. 4826-L.R., to 4836-L, R, respectively, dated 2nd April, 1956, pub. in the D.C. Extra., dated 2nd April, 1956, Part I.

with effect from such date as may be specified in the notification (hereinafter referred to as the notified date), [1][all or any of the lands in his khas possesion of which he shall not be entitled to retain possession under the said section and so much of the lands in his khas possession as has been acquired under this sub section and has not vested in the Government under clause (a) of sub section (4), shall vest absolutely in the Government free from all encumbrances].

[2][(2a) In a notification issued under this section, rent-receivers may be specified or described by name, or by reference to areas wherein they have interests, or in such other manner as the Government may determine.]

(3) The notification referred to in sub section (1) or subsection (2) shall be in such form and shall contain such particulars as may be prescribed.

(4) On and from the date specified in a notification under sub-section (1),-

(a) all interests of the rent receivers in the estates, [2][taluks, tenures, holdings or tenancies], specified in the notification, including their interests in all lands in their khas possession, and interests in all sub-soil and rights to minerals, in such estates, taluks, tenures, holdings or tenancies] and also including the interests of any such rent receiver in any building or part of a building on any such land and used primarily as office or cutchery for the collection of rent of any estate taluks, tenure, holding or tenancy, shall vest absolutely in the [4][Government] free from all encumbrances. [5]*****

Provided that nothing in this clause shall apply to any building within the homestead of the rent receiver concerned:

(b) all arrears of revenue or rent and all cesses, together with interest, if any, payable thereon, remaining lawfully due to the Collector on the notified date in respect of any interest acquired under sub section (1) shall, after the sdaid date, continue to be recoverable from the person by whom they were payable and shall, without prejudice to any other mode of recovery, be recoverable by the deduction of the amount of such arrears, ceasses and interest from the compensation money payable to such person under section 58, when so ordered by the Collector;

(c) all arrears of rent and all cesses, together with interest if any, due thereon, in respect of any period previous to the notified date payable to a rent receiver in respect of any interest acquired under sub-section (1) which have not been barred by limitation shall, on and from the said date, vest in, and be recoverable by, the Government and shall, without prejudice to any other mode of recovery, be recoverable, from the persons by whom they were payable, by the deduction of the amount of such arrears, cesses and interest from the compensation money, if any, payable to such persons under section 58 as so ordered by the Collector;

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1. The words, brackets, letter, figure and commas "(a) all or any of the lands in his khas possession of which he shall not be entitled to retain possession under the said section" were subs. for the words and commas "all or any of the lands in his khas possession of which he shall not be entitled to retain possession under the said section" by E.B. Act XII of 1954, s.3.

2. Sub-section (2) was added by E.B. Ord. [illegible] of 1950, s.4.

3. The words and commas "taluks, tenures, holdings or tenancies" were subs. for the words "taluks or tenures" by E.B. Act VI of 1952, s.3.

4. The words "Provincial Government" were replaced by the word "Government" by P.O. 48 of 1972.

5. The words "other than sub tenancies" were omitted by E.B. Ord. III of 1950, s.4.

(d) all amounts recoverable by the [1][Government] from a rent receiver under the Bengal Embankment Act, 1882, [2][or the East Bengal Embankment and Drainage Act, 1952] which remain outstanding on the notified date, whether on account of arrear dues or dues under future instalments under the said Acts, in respect of any interest acquired under sub-section (1), shall, without prejudice to any other mode of recovery, be recoverable by the deduction of the amounts of such arrear and future instalments from the compensation money payable to such rent receiver under section 58 in respect of such interest, when so ordered by the Collector;

[3][(dd) all arrears of agricultural income tax recoverable by the Government from a rent receiver under the Bengal Agricultural Income tax Act, 1944, which remain outstanding on the notified date, in respect of any interest acquired under sub-section (1), shall, without prejudice to any other mode of recovery, be recoverable by the deduction of the amounts of such arrears from the compensation money payable to such rent receiver under section 58 in respect of such interest, when so ordered by the Collector;]

(e) all tenants holding lands in such estates, [4][taluks, tenures, holdings or tenancies] directly under the rent receiver specified in the notification under sub-section (1), shall become tenants directly under the Government and shall pay rent at the existing rate, in respect of the rent paying lands so held by them, to the Government and not to anybody else :

[5][Provided that in cases where no notification was issued under sub-section (2) of section 43 before the commencement of the East Bengal State Acquisition and Tenancy (Amendment) Ordinance, 1957, declaring that the Compensation Assessment-roll in respect of the interest of any such rent-receiver in any such estate, taluk, tenure, holding or tenancy had been finally published, all tenants holding lands in such estate, taluk, tenure, holding or tenancy directly under such rent-receiver shall, as tenants under the [6][Government], be liable to pay rents in respect of the lands so held by them, except rent free lands, at the rates determined in the record-of-rights finally published under sub-section (3) of section 19 subject to modification under section 53.]

(f) all such rent receivers shall be entitled to hold as tenants directly under the government such of their khas lands as has not been acquired under sub-section (2) and shall be liable to pay to the Government, the rent determined for such lands under section 5;

[7][(ff) pending the final publication of the record-of-rights under sub-section (3) of section 19 or determination of rents under section 5, as the case may be, the tenants referred to in the proviso to clause (e) and in clause (f) shall pay rents to the Government

1. The words "Provincial Government" were replaced by the word "Government" by P.O. 48 of 1972.

2. The words, comma and figures within square brakets were ins. by E.P. Ord. XXVIII of 1960, First Schedule.

3. Clause (dd) was inserted by E.P. Ord. XXXIX of 1959, s. 3.

4. The words and commas "taluks, tenures, holdings or tenancies" were subs. for the words "taluks or tenures" by E.B. Act VI of 1952, s.3.

5. The proviso was added by E.P. Ord. XLIV of 1958, s.5.

6. The words "Provincial Government" were replaced by the word "Government" by P.O. 48 of 1972.

7. Clause (ff) with the proviso was ins. by E.P. Ord. XLIV of 1958, s. 5.

at the rates shown in the preliminary rent-rolls prepared under the rules made [1][under Chapter IV in the district other than the district of Sylhet; and, in the district of Sylhet, the tenants referred to in the proviso to clause (e) shall pay rents to the Government at the rates shown in the provisional rent-rolls, prepared on the basis of draft record-of-rights attested under the provisions of the Sylhet Tenancy Act, 1936, the Assam Land and Revenue Regulation, 1886, or the East Bengal State Acquisition and Tenancy Act, 1950, as the case may be, and the tenants referred to in clause (f) shall pay rent to the Government at the rates determined under section 5 and the rules made thereunder :

Provided that when any such rent is shown either at an enhanced or at a reduced rate in the record-of-rights finally published under sub-section (3) of section 19, or determined either at an enhanced or at a reduced rate under section 5, as the case may be, or when any such rent is enhanced or reduced under section 53, the tenant shall be liable to pay the balance or entitled to the adjustment of excess payment against future rent payable by him, as the case may be, with retrospective effect from the notified date.]

(g) an arrear of rent payable under [2][clause (e), (f) and (ff) [3][may, without prejudice to any other mode of recovery,] be recoverable under the Bengal Public Demands Recovery Act, 1913;

(h) a transferable tenure coming [4][in whole] directly under the Government under clause (e) shall be deemed to be a tenure as defined in section 1 of the Bengal Land Revenue Sales Act, 1868.

[5][(4a) Notwithstanding anything contained in any other law for the time being in force, in computing the period of limitation for the recovery of any arrear of rent payable under clauses (e), (f) and (ff) of sub-section (4) in the district of Sylhet, a period of twenty-four months on and from the date of acquisition under this Act of the rent receiving interests to which such arrears relate shall be excluded.]

(5) The outgoing rent receivers, whose interests have been acquired under this section, shall be entitled to compensation as provided in this Act.

Comments

With the publication of natification under section 3 all rent-reciving interests including wakt and debuttor property stood aequired by and vested in the Government (33 DLR (AD) 13).

Rights conferred to acquire rent-receiving interest are not ex-facie discriminatiory. If and when they are so used, the party complaining has to prove it (9 DLR (SC) 21).

No difference between different kinds of tenants in case of acquisition by Government. There is no distinction between a temporary tenant, a tenant for a term of years, and a tenant from year to year so far as acquisition of tenancy right by the Government is concerned (20 DLR 1223)

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1. The words, figures, brackets, commas, semi-colon within square brackets were subs. for the words, figures and colon "under Chapter IV" by E.P. Ord. IV of 1959, s. 3.

2. The words brackets, comma and letters "clauses (e) (f) and (ff), were subs. for the words, brackets and letters "clause (e) and (f) by E.P. Ord. XLIV of 1958, s. 5(3).

3. The words and commas within square brackets were subs. for the word "shall" by E.B. Act VI of 1952, s. 4.

4. The words "in whole" were inserted, ibid.

5. Sub-section (4a) was inserted and be deemed to have been so inserted on the 13th April, 1960 by E.P. Ord. III of 1961, s. 2.

After notification under section 3, under-raiyat was upgraded to the status of tenant. Winth the acquisition of all rent-receiving interests only persons left are the Government at the top and the tenant at the bottom (29 DLR 225).

Reding the Act as a whole the intention appears to be, firstly, that all rent-receiveing interests shall disappear, secondly, that so far as tenants are concerned, they will be entitled to retain possession only of certain categories of lands which are retainable and thirdly, that even in respect of such retainable lands a maximum ceiling is fixed. So far as the rent-receivers are conceerned, their interests are to vest either from the date of the notification of acquisition or from the date mentioned in such a notification. But so far as tenants were concerned, their interests are to stand acquired and vested in Government on the notification of the final publication of the compensation assessment roll (16 DLR (SC) 281).

No fresh notification for the acquisition of interest of tenants in hats and bazars was necessary because, that was to follow as a consequence of the publication by operation of the provisions of the statute itseslf, and it is for this reason that in sub-section (3) of section 44 the language used is that they shall be deemed to vest absolutely in the provincial Government, that is to say, that as a legal consequence of the notification of the final publication of the compensation assessment-roll they shall be treated as if acquired and vested in the Government (16 DLR (SC) 281).

Malikana is rent-receiving interest and as such acquirable under the Act. Rihg to get malikana claimed by the petitioner vested in the Government on publication of notification on 2nd April, 1965.

Interest claimed by the petitioner, though acquirable has not yet vested in the provincial Government nor has been acquired by it. Therefore the provincial Government cannot refuse to continue payment of the malikana to the petitioner until his right is acquired under Chapter V of the Act (18 DLR 184).

Acquisition of property by notification on 24.4 1952 rendered the plaintiff (who was originally a zamindar) "non-rent-receiver". Another notification dated 11.8.52 released from acquisition certain property of the plaintiff. Plaintiff's claim to the suit property based on the notification of 11.8.52 is well founded, as the general acquiston by notification issused on 2.4.56 acquiring rent-receiver's interest did not effect the plaintiff's property as he was on that date not a rent-receiver (20 DLR 627).

Acquisition if otherwise valid will not be rendered invalid merely because compensation for acquisstion not paid. Held payment of compensation not being a condition precedent for acquisition. Its non-payment before the fundamental Rights come into operation on the 10th January, 1964, cannot be said to have affected the position of the provincial Government in the estates had otherwise vested in it (18 DLR 727).

After Gvernment acquisistion of excess khas lands the khas lands which are retained by the rent receivers, do not vest in them free [illegible] created by them (20 DLR 202). Katchery ghar does not become acquired upon the issue of notification under section 3 (2) it must be acquired upon an express decision to that effect (16 DLr (SC) 125).

The right of a rent-receiver to retain his kutcheryghar against a vesting notification under section 3 of the Act is not lost unless the kutcheryghar is expressly acquired by the provincial Govrnment. Unless a decision to acquire a kutcheryghar is made by the

provincial Government, the rent-receiver to whom it appertains has a statutory right to retain it as a tenant under the provincial Government (16 DLR (SC) 125).

Khas lands which were parts of taluka and over which the neighbouring people had pasturage rights on acquisition of taluka interests the lands remaining in possession of the former rent-receivers were not free from the pasturage right which the people had over them (21 DLR (SC) 440).

Customary right of pasturage over the land of other person-whether such right over the land of the renl reciever enjoyed by the tenants is an encumbrance within the muaning of section 2(10) of the S. A. T. Act.

Customary right over the suitland was not created by the ex-rent receiver by grant. The said was not in khas possession of the ex-rent reciever when the Government acquired the non-retainable khos lands. Right of pasturage is acquired on the basis of custom and it is not an easment. The right of pasturage acquired by the plailiffs used from time immumorial is not an encumbrance contemplated by sub-section (10) of section 2 of the S. A. T. Act, Since this right is not an encumbrance the question of its being vested in the Government under section 3(2) of the said Act does not arise (1987 BLD 307; 1988 BLD (AD) 80).

Chapter V which deals with acquisition of all acquirable interests under the Act not only of rent-receivers but also of cultivating raiyats, cultivating under-raiyats and non-agricultural Tenants. Under Chapter II acquisition precedes preparation of compensation assessment-rolls but under Chapter V acquisition follows preparation of compensation assessment-rolls (21 DLR (SC) 440).

Rent-receiving interest and non retainable khas lands of waqfs vested in the Govt. from 14th April, 1956 notifications and not excepted by 9th May 1959 notifications (19 DLR 106).

Mutawallis and shebaits who were rent-receivers -the rent-receiving interests and non-retainable khas lands vested in the provincial Govt. by the notification, dated 2nd April, 1956.

Excess khas lands in possession of Mutawallis vest in th Government in terms of S. 43 (2) only when compensation assesment roll in respect of such land has been prepared (19 DLR 106).

Rent-receiving interests can be acquired even before the preparation of record of rights and publication of compensation assessment roll in respect of such land has been prepared.(Ibid)

Rent-receiving interests can be acquired even before the preparation of record of rights and publication of compensation assessment rolls (27 DLR (AD) 109).

Afer the notification issued under section 3 of the Act, the status of the under raiyat bcecome upgraded to that of raiyat. (Ibid)

With the acquisition of the rent-reciving interests by the Govt. all intermediary interests disappeared and a person holding the land under the Govrnment becomes a tenant. A raiyat or a malik-of the Government. Consequently the under raiyat who actuallly holds the land becomes a tenant under the Govt.(Ibid)

The interest of a lessor who has granted a temporary lease is also acquirable with only one exception, namely a temporary lease in respect of non agricultural land is not acquirable. 30 years lease of non-agricultural land not a lease in perpetuity, Such interest can not be acquired under section 3 (18 DLR 490).

Encumbrances on a tenure when annulled before the date on acquisition of 14. 4.65. Khas lands under the tenure pass to the purchaser (16 DIR 669).

Govt. notivications of 2.4.56 as well of 9.5.59 with regard to the acquisition of waqf and debuttor estates-Latter notification did not exempt waqfs from acquisition (19 DLR 109).

Specification of interests acquired not necessary when "all interests" are acquired (15 DLR (SC) 139).

Failure to specify the interests acquired does not render the acquisition invalid (14 DLR 420).

Religious intitutions such as waqfs or debuttors, guaranted under the Fundamental Rights are not acquirable under the East Bengal State Acquisition Act, but when Fundamental Rights are not in exixtance such acquisition will be valid in Law and subsequent enactment of the Fundamental Right will not invalidate such acquisition (18 DLR 727).

30 years lease of non-Agricultural land not a lease in perpetuity. As such lessee's interest cannot be acquired under section 3 of the Act. Where the lease was limited to a specific period of thirty years it can be said that it was a lease held in perpetuity.

The position, therefore, whose title has not been extinguished by acquistion of all rent-receiving interests under section 3 of the said East Bengal State Acquisition and Tenancy Act, 1950. If a proprietor or a tenure holder has a raiyat or an under raiyat under him, then the said proprietor or tenure holder becoms rent-receiver, and with regard to non agricultural land, which has been leased out otherwise than in perpetuity,the holder of the land does not become a rent-receiver (17 DLR 329).

Encumbrances created by rent-receivers in respect of their khas lnads-after acquisition of excess khas lands, the khas lands which are retained by the rent-receivers do not vest in them free from incoumbrances (16 DLR 202).

Khas lands which were parts of taluks and over which the neighbouring people had pasturage rights.On acquisition of taluka interests the lands remaining in possession of the former rent-receivers were not free from the pasturage right which the people had over them (21 DLR (SC) 440).

"Free from all incumbrances" Right of way and easements are encoumbrances and, as such, are destroyed, with the acquisition of an estate to which they relate, by the Government (10 DLR 523).

From the date of notification u/s.3 all classes of tenants become liable to pay rent directly to the Government and become tenants under the Govt. alone but in all other respects they continued to be regulated by the B.T. Act till part V of state Acquisition & Tenancy Act came into operation (35 DLR (AD) 230).

The view that with the acquisitoin of rent-receiving interests all under-raiyats were upgraded to the statues of raiyats is wrong (35 DLR (AD) 230).

After acquisition of rent-receiving interest, all existing tenants became raiyats under the Govt. for the sole purpose of collecting rent from them not that the different classifications of tenant disappeared with such acquisition (35 DLR (AD) 230).

It is not correct that once raiyati interests vested in the Govt. by acquisition of superior interests under-raiyat interests automatically upgraded to the position of raiyats for all purposes (35 DLR (AD) 230).

With the publication of notification u/s. 3 all rent-receiving interests including wapf and debuttor property stood acquired by and vested in the Government (33 DLR (AD) 13).

Khas lands of rent-receivers are possessed by them in their capacity as rent-receivers; but once the rent-receiving interests are acquired on the publication of notification under sub-section (1) of section 3, the khas lands also vest in the Government. This vesting is rather notional and is for the purpose of realisation of rent from the outgoing rent-receivers. Whatever vests in the Government vests free from all encumbrances. A rent-receiver in spite of this vesting continues to retain possession of his khas lands. A change, no doubt, takes place in his status. He held, before the date mentioned in the notification, these lands in his rights as rent-receiver but from the date become a tenant under the Goverment. The lands remain with him and the vesting in the Government of these lands free from all encumbrances does not come to his aid in any way (21 DLR (SC) 440).

Upon the publication of a notification under sub-section (2) of section 3 all the lands in the khas possession of the rent-receiver, excluding retainable lands under section 20(2) (a) and (b) shall vest in the said Government. Such khas lands, Whcih come within the meaning of section 20 (2) (a) and (b) have not been acquired by the Provincial Government (15 DLR 703).

Kutcheryghar does not become acquired upon the issue of notification under section 3(2); it must be acquired upon an express decision to that effcet. Therefore the rent-receiver has the statutory right to retain it as a tenant under the Government (16 DLR (SC) 125).

Customary right of compulsorily holding the hat on Tuesdays and Fridays is also an encumbrances and is wiped out on the vesting of the hat in in the Govt. free from encumbrances (35 DLR 331).

If the Government by a notification acquired the interests of all rent-receivers in a district, part of a district, or local area, by reference to areas wherein they had interst, it was not beyond the powers of the Provincial Government given to it u/s. 3 (1) 3.

The notification for the acquisitions of khas lands under section 3 (2) are subject to the provisions of sub-clauses (a) and (b) s. 20(2) and therefore, it can not be held that the lands of whcih a rent-receiver can not be dispossessed had to be specified in the notification (9 DLR (SC) 21).

The specifications of the properties which are intended to be acquired mentioned in sub-sections (i) and (4) of section 3 of the Acquisiton Act refer to rent-receivers and not to their interest. Sub-section (2a) of section 3 of the Act provides that in a notification issued under this Section rent-receivers may be specified or described by name, or by reference to areas wherein they have interests, or such other manner as the Provincial Government may determine. The notification dated the 2nd of April, 1956 was issued with reference to area. For the failure to mention the interest of the rent-recivers falling in the area., no illegality has been committed (14 DLR 420).

After final determination of rent u/s 19(3) every tenant is liable to pay enhanced rate (if any) under clause (ff) s. 3 (48).

In this connection reference may be made to the provisions of clause (ff) of sub-section (4) of section 3 of the State Acquisition and Tenancy Act which privides for the obligation of every owner of any land to pay rent to the Government at the enhanced rate, if any, after the final determination of the rent under sub-section (3) of section 19 of the State Acqusition & Tenancy Act and in such case the tenant in question shall be liable to pay the balance with retrospective effect from the notified date, that is, the date of final publication of the record of rights under sub-section (3) of Section 10 of the State Acquisition and Tenancy Act (32 DLR 130).

For prospective realisation of rent at the final rate, limitation shall run from date of final publication of record-of-rights under sec. 19(3) which, in case of Sylhet district, and in view of section 3 (4A) read with s 142 shall be 5 years (32 DLR 130).

If there is no service for acquesition under section 3 the presumption is there has been no acquesition under the S. A. T Act (39 DLR (AD) 16).

After the abolition of all rent-receiving enterests in the country there is only one class of tenancy under the Government whose rights and liabilities are governed by an uniform law (38 DLR (AD) 93; 30 DLR (SC) relied on).

With the publication of notification under section 3 all rent recieving interests including waks and debuttar property stood acquiered by and vested in the Government (33DLR (AD) 13).

[1][3A. **Service of notice for furnishing return before notification.**- For the purpose of acquisition, under section 3, of the interest of any rent receiver in any estate, taluk, tenure, holding or tenancy or of the lands in his khas possession the Revenue officer may, at any time before the publication of a notification under sub-section (1) or sub-section (2) of that section in respect of such interest or lands, cause a notice to be served on such rent receiver in the prescribed manner, directing him to furnish, within such time, not being less than sixty days from the date of service of the notice, as may be specified therein, a return in the prescribed form showing all or any of the following particulars, as may be required by such notice -

(i) the total area and description of all estates, taluks, tenures, holdings and tenancies held by him and the annual revenue or rent and cesses payable by him in respect thereof to the Government or to his immediate superior landlord, as the case may be;

(ii) the names of the villages, thanas and districts in which the lands of the estates, taluks, tenures, holdings and tenancies are situated, together with a list of collection papers relating thereto; for a period not exceeding five years immediately proceeding;

(iii) the area, description and classification of all lands in his khas possession with the names of villages and thanas in which they are situated;

(iv) the names of all co-sharers having joint collection with him, with their respective shares in such estates, taluks, tenures, holdings and tenancies; and

(v) such other information as the Revenue officer may deem necessary.]

4. Service of notice to furnish returns, etc. and penalty for non-compliance.- (1) As soon as may be after the publication of a notification under sub-section (1) of section 3, [2][the Revenue Officer may] cause a notice to be served in the prescribed manner on every rent receiver specified in such notification other than a rent receiver whose properties are under the management of the Court of Wards under the Court of Wards Act, 1879, directing him to furnish,-

(a) a return in the prescribed form showing

(i) the total area and description of the estate, [3][taluk, tenure, holding or tenancy] in respect of which his interests are acquired by the said notification and the annual revenue or rent and cesses payable by him in respect thereof to the Government or to his immediate superior landlord, as the case may be.

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1. Section 3A was inserted by E.P. Act VI of 1952, s. 5.

2. The words within square brackets were subs. for the words 'the Revenue officer shall' by E.B. Ord. III of 1956, s. 5.

3. The words and commas "taluk, tenure, holding or tenancy" were subs. for the words "taluk or tenure", ibid.

(ii) the names of the villages with thanas and districts in which the lands of the estate, taluk, tenure, holding or tenancy are situated and the total annual demand or rent and cesses of each village with a list of collection papers in support of the demand.

(iii) the area and description of the lands in his khas possession, and

(iv) the names of all co-sharers having joint collection with him, with their respective shares in such estate, taluk, tenure, holding or tenancy, and

(b) such other information, papers or documents as the Revenue officer may deem necessary,

and to hand over all papers of his sherista relating to the estate, taluk, tenure, holding or tenancy, to such officer and within such time, not being less than sixty days from the date of service of the notice, as may be specified in such notice [1][:].

[2][Provided that it shall not be necessary for a rent receiver to furnish such of the particulars as, in the opinion of the Revenue officer, have already been correctly furnished by him in pursuant to a notice under section 3A.]

(2) The officer taking delivery of the papers mentioned in sub section (1) shall grant a receipt for the papers handed over to him.

(3) All co-sharers having joint collection shall be jointly and severally liable to comply with the directions given in [3][a notice under sub section (1) of this section or section 3A] so far as they relate to any estate, [4][taluk, tenure, holding or tenancy] held by them jointly.

(4) If any person, on whom a notice has been served under [5][sub-section (1) of this section or section 3A], wilfully fails to comply with all or any of the directions contained in such notice within the time specified therein or within such further time as the Revenue officer may allow in his discretion, or wilfully furnishes any incorrect information or suppresses any information, paper or document, in respect of any estate, taluk, tenure, holding or tenancy,-

(a) he shall be liable to a fine, to be imposed by the Revenue officer after giving the defaulting person an opportunity of being heard, which may,-

(i) in the case of a revenue paying estate or a rent paying taluk, tenure, holding or tenancy, extend to five times the annual revenue of the estate or the annual rent of the taluk, tenure, holding or tenancy, as the case may be, and

(ii) in the case of a revenue free estate or a rent free taluk, tenure, holding or tenancy, extend to such amount not exceeding two thousand five hundred taka as the Revenue officer may fix in his discretion; and

(b) in addition, he may be deprived of the benefit of the ad interim payment as provided in section 6 if so ordered by the Revenue officer.

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1. The proviso was added after substituting a colon for the full stop at the end of sub section (1) of section 4 by E.B. Act VI of 1952, S. 6.

2. The words within square brackets were subs. for the words 'the Revenue officer shall' by E.B. Ord. III of 1956, s. 5.

3. The words bracket, figures and etter within square brackets were subs. for the words "such notice" by E. B. Act VI of 1952, s. 6.

4. The words and commas "taluk, tenure, holding or tenancy" were subs. for the words "tenure", ibid.

5. The words, brackets, figures and letter within square brackets were subs. for brackets and figure "subsection (1)" by E.B. Act VI 1952, s. 6.

(5) (i) If any rent receiver, on whom a notice has been served under sub section (1) fails to hand over the papers of his sherista relating to any estate [1][taluk, tenure, holding or tenancy] in accordance with the direction contained in such notice within the time specified therein or within such further time as the Revenue officer may allow in his discretion, the Revenue officer or any other person authorised by him, may, with such assistance, if any as he thinks necessary, enter upon any land or building, where the Revenue officer has reason to believe that such papers may be found, and seize and take possession of such papers as he may consider essential for the management of such estate taluk, tenure, holding or tenancy :

Provided that the Revenue officer or such other person shall not enter upon any enclosed courtyard or garden attached to a building except with the consent of the inmate or occupier thereof or if such consent is refused, except after giving such inmate or occupier at least two hours notice in writing of his intention to do so :

Provided further that an inventory of the papers taken possession of by the Revenue officer or such other person under this sub-section shall be furnished to the rent receiver concerned by the Revenue officer.

(ii) The provisions of this sub-section shall apply without prejudice to the provisions of sub-section (4).

(6) Any rent-receiver, who has handed over the papers of his sherista relating to any estate, taluk, tenure, holding or tenancy to an officer of the Government under sub section (1), or any person interested in such an estate, taluk, tenure, holding or tenancy, shall be entitled to inspect such papers in the prescribed manner and to get copies of any such paper on payment of the prescribed fees.

[2][5. As soon as may be after the publication of a notification under sub section (1) of section 3, the Revenue officer shall determine, according to the principles laid down in section 23, 24, [3][25,25A],26,27 and 28, the rent of every parcel of lands in the khas possession of all rent receivers specified in such notification and comprised in the estates, taluks, tenures, holdings or tenancies to which such notification relates.

*6. **Ad interim payment.**- (1) A rent receiver, whose interests in any estate, [4][taluk, tenure, holding or tenancy] are acquired under sub section (1) of section 3, shall, with effect from the notified date, be entitled to receive annually in cash in respect of such interests at such time and in such manner as may be prescribed, an ad interim payment at the rate of one third of the net income on account of the demands of rent and cesses for any period after the notified date collected from such estate, taluk, tenure, holding or tenancy, as the case may be, in respect of such interests in the year to which such a payment relates.

(2) A rent receiver, whose khas land is acquired under sub section (2) of section 3, shall, with effect from the notified date, be entitled to receive annually in cash in respect

1.The words and commas "taluk, tenure, holding or tenancy" were subs. for the words "taluk or tenure", by E. B. Act VI of 1952, S. 3.

2. Section 5 was subs. for the former section 5 by E.B. Act XII of 1954, s. 4.

3. The figures, comma an dletter "25, 25A" were subs. for the figure "25" by E.P. Ord. XLIV of 1958 s. 6.

4. The words and commas "taluks, tenures, holdings or tenancies" were subs. for the words "taluks or tenures" by E.B. Act VI of 1952, s.3.

*Section 6,7,9 and 10 shall be deemed to have come into force on the 1st day of January, 1952. See E.B. Act XII of 1954, s. 1(2).

of such land, at such time and in such manner as may be prescribed, an ad interim payment at the rate of five per centum of the amount of compensation payable for such land under sub-section (1) of section 39 and the provisions of sub-sections (2), (3) and (4) of that section shall apply *mutatis mutandis* in the matter of determination of such amount.

(3) For the purposes of sub-section (1) the net income from any estate, [1][taluk, tenure, holding or tenancy] for any year shall be computed by deducting from the gross collections, made by the Government in such year from such estate, taluk, tenure, holding or tenancy on account of the demands of rents and cesses for any period after the notified date due to the interests acquired under sub-section (1) of section 3, the following :-

(i) an amount equivalent to the sums which were or are determined to have been payable annually for such interests immediately before the notified date on account of revenue or rent and cesses to the Government or to the immediate superior landlord, as the case may be;

[2][(ii) an amount equivalent to the amount of the taxes on such collections that would have been assessable, at the average rates under the Bengal Agricultural Income-tax Act, 1944 or the Income tax Act, 1922 had not the provisions of section 3 been applied;]

(iii) the expenditure, if any, incurred for the maintenance of any irrigation or protective works in such estate, [1][taluk, tenure, holding or tenancy] if the outgoing rent-receiver was legally bound to maintain them; and

(iv) collection charges not exceeding twenty per centum of the gross collections.

[3][Explanation : In this sub section average rates means the average rates of taxes at which assessment was made for the last time, before the notified date, under the provisions of the Bengal Agricultural Income Tax Act, 1944, or the Income Tax Act, 1922.]

(4) In determining the amounts of deductions under sub section (3), the Revenue officer shall be guided by such rules as may be made in this behalf by the Government.

[4][(4a) Notwithstanding anything contained in sub sections (1), (3) and (4), the Government may pay to any such rent receiver in cash, at such time and in such manner as may be prescribed, a sum, in lieu of ad interim payment, provided for in sub section (1), calculated at the rate of one sixth of the net income of such interest determined under section 35 or section 36 as the case may be, in the Compensation Assessment-roll finally published under section 42, subject to modification if any under section 54, for each year of which ad interim payment is due to him under sub section (1) but not paid under that sub section.]

[4][(5) Nothing in this section shall apply to any estate, taluk, tenure, holding, tenancy or land held under wakf, wakf-al-al-aulad, debutter or any other trust.]

[6][**6A. Adinterim payment in respect of trust properties.**- A rent receiver, whose interest in any estate taluk, tenure holding or tenancy held under wakf wakf-al-al-aulad, debutter or any other trust, are acquired under sub section (1) of section 3, shall, with

1. The words and commas "taluk, tenure, holding or tenancy" were subs. for the words "taluk or tenure", by E. B. Act VI of 1952, S. 3.
2. Clause (ii) was subs. for the original clause (ii) by E.B. Act VI of 1952, s. 8.
3. The explanation was added by E. B. Act VI of 1952, s. 8.
4. Sub-section (4a) was inserted by E.P. Ord. XIV of 1961, s.3.
5. Sub-section (5) was added by E.B. Act VI of 1952, s. 8.
6. Section 6A was inserted, ibid, s. 9.

effect from the notified date, be entitled to receive annually in cash in respect of such interest at such time and in such manner as may be prescribed, an ad interim payment, as follows :-

(i) an annuity equivalent to so much of the net income of the estate, taluk, tenure, holding or tenancy as has been dedicated and applied exclusively to charitable or religious purposes without any reservation of pecuniary benefit for any individual;

(ii) for the portion of the net income, if any, of the estate, taluk, tenure holding or tenancy, remaining after deduction of the annuity under clause (i), a sum calculated at the rate of three per centum of the amount of compensation payable of such portion of the net income under sub section (1) of section 37.

(2) The amount of annuity referred to in clause (i) of sub section (1) shall be determined in the same manner as is prescribed for the assessment of perpetual annuity under sub-section (3) of section 37 and the provisions of sub-sections (4) of section 58 and sub-section (4) of section 59 shall apply in the matter of payment of such amount.

(3) For the purpose of clause (ii) of sub-section (1), the net income shall be determined in the manner provided in sub-sections (3) and (4) of section 6.

[1][(4) A rent receiver, whose khas land, held under wakf, wakf-al-al-aulad, debutter or any other trust, is acquired under sub section (2) of section 3, shall, with effect from the notified date, be entitled to receive annually in cash in respect of such land, at such time and in such manner as may be prescribed, an ad interim payment as follows :-

(i) an annuity equivalent to so much of the net income of the land as has been dedicated and applied exclusively to charitable or religious purposes without any reservation of pecuniary benefit for any individual: and

(ii) for the remaining net income, if any, of the land, at the rate of three per centum of the amount of compensation payable for such land under sub-section (1) of section 39, and the provisions of sub-section (2), (3) and (4) of that section shall apply *mutatis mutandis* in the matter of determination of such amount.]

[2][(5) The amount of annuity referred to in clause (1) of sub-section (4) shall be determined in the same manner as is prescribed for the determination of perpetual annuity under sub-section (1a) of section 39 and the provisions of sub section (4) of section 58 and sub-section (4) of section 59 shall apply in the matter of payment of such amount.]

Comments

Property can be saved from acquisition by creation of charitable and religious endowment. Section 6A (1) read with notification No. 7463 LR dated 9.5.59 lays down that if the grantor had anticipated that his properties might be eventually acquired it was within his right to give such properties to charity and to religious purposes instead of allowing the same to be acquired by the government in future (14 DLR 680).

*7. **Appeal.**- Any person aggrieved by an order of the Revenue officer under sub-section (4) of 3[section 4 or section 5 or by an order of the Revenue officer determining the

1. Sub-section (4) was subs. for the former sub-section (4) by E.P. Ord. XII of 1960, s.5.

2. Sub-section (5) was inserted by EP. Ord. XII of 1960, s. 5.

3. The words, figures, comma and letter within square brackets were subs. for the words, figures, brackets and comma 'section 4, section 5 or sub-section (1) or (2) of section 6' by E.B. Act VI of 1962, s. 10.

*Section 6,7,9 and 10 shall be deemed to have come into force on the 1st day of January, 1952.

amount of any ad interim payment under section [illegible] section 6A] may, within a prescribed period and in the prescribed manner present an appeal in writing to a prescribed superior Revenue Authority; and the decision of such Authority and also, subject only to such decision, an order of the Revenue officer passed under the said section and sub-sections shall be final.

8. **Payment and recovery of fines imposed under this Chapter.**- The fine imposed under this Chapter shall be paid, by the person fined, in the prescribed manner within sixty days from the date of the order of the Revenue officer imposing the fine or, when an appeal is presented against such order under section 7 within sixty days from the date of th disposal of such appeal; and in default of such payment the amount of such fine shall be recoverable as a public demand under the Bengal Public Demands Recovery Act, 1913.

[1]* * * *

*10. **Exemption of ad interim *payments from attachments.**- Notwithstanding anythign contained in the Code of Civil Procedure, 1908, and the Bengal Public Demands Recovery Act, 1913, any amount payable to an outgoing rent receiver under sub section (1) or (2) of section 6 [2][or sub section (1) or of section 6A] shall not be liable to attachment in execution of any decree or order of a Civil Court [illegible] certificate signed u/s [illegible] the Bengal Public Demands Recovery Act, 1913, other than a decree or certificate for the recovery of arrears of revenue, rent or cesses due in respect of the estate, taluk, [3][tenure, holding tenancy or land] to which such payment relates.

[4][10A. **Special provisions regarding certain rent receiving interests held under wakf, wakf-al-al-aulad, debutter or other religious trust.**- (1) Notwithstanding anything contained in clauses (e) and (ff) of sub section (4) of section 3 or in section 6A, the provisions of this section shall apply to the cases where the [5][interest of a rent receiver] held under any wakf, wakf-al-al-aulad, debutter or other religious trust have been acquired under sub-section (1) [6][or sub section (2)] of section 3, but the Government have not exercised the right of possession over such interest till the date of commencement of the East Bengal State Acquisition and Tenancy (Amendment) Ordinance, 1960, by starting collection of rent and cesses from the tenants holding lands immediately under such interests, or by any other means.

(2) On and from the date of acquisition of such [7]****** interests, the Mutwalli, Shebait or trustee as the case may be, holding such interest immediately before such date shall continue, and be deemed to have continued, to manage such interests as the agent of

1. Section 9, 9A, 9B, 9C and 9D were omitted by E.P. Act VI of 1964, s. 3.

*Section 6,7,9 and 10 shall be deemed to have come into force on the 1st day of January, 1952.

2. The words, figures, brackets ad letter within square brackets were inserted by E.B. Act VI of 1952, s. 11.

3. The words and commas within square brackets were substituted, ibid, for the words 'tenure or land'.

4. Section 10A was inserted by E.P. Ord. IX of 1960, s. 2.

5. The words within square brackets were substituted for the words 'rent receiving interest' by E.P. Ord. IV of 1962, s.2.

6. The words, brackets and figure within square brackets were inserted, ibid.

7. The words 'rent-receving' were omitted by E.P. Ord. IV of 1962.

the government till the last day of the agricultural year [1][in which the] publication of the notification under sub-section (2) of section 43 [2][,] declaring that a Compensation Assessment-roll in respect of such interests has been finally published [3][is made,] [4][or till the time the Government exercise the right of possession over such interests whichever is later,]

(3) Such Mutwalli, Shebait or trustee shall, as the agent of the Government, be entitled to collect, at the rates provided in, and subject to the provisions of, sub section (4), all rents and cesses payable by the tenants to the Government in respect of [5][such interests, and to collect the usufract of such interest in khas land,] for the period from the date of acquisition of such interests till the last day of the agricultural year [6][or till the exercise of the right of possession, as referred to in sub-section (2), whichever is later] and to retain the proceeds of such collection [7][or other income] in lieu of ad interim payments under section 6A [8][in respect of such interests] and his remuneration, subject to payment to the Government annually, in the prescribed manner, of a sum equivalent to the total of the following amounts, namely :-

(a) the amounts which were, or are determined by the collector to have been, payable annually for such interests immediately before acquisition on account of revenue or rent and cesses to the Government or to the immediate superior landlord, as the case may be, and

(b) the amount that would have been assessable as tax under the Bengal Agricultural Income Tax Act, 1944, in respect of the income from [9][such interest], had not the [10]* ** interests been acquired [11][:]

8[Provided that -

(i) no such Mutwalli, Shebait or trustee shall be entitled to transfer, or to create any encumbrance or charge on, any such interest in any khas land in any manner otherwise than by a temporary lease, but no such temporary lease shall be given for a period exceeding one year at a time expiring on the last day of the agricultural year in which it is created, nor shall any tree be cut down or building demolished, except with the previous permission of the collector and on such terms as the collector may prescribe in that behalf; and any transfer or any

1. The words, within square brackets were substituted, ibid, for the words "next following the date of".

2. The comma within square brackets was inserted, ibid, after the words and figures 'section 43'.

3. The comma and words within square brackets were inserted, ibid, after the words 'finally published'.

4. the words within square brackets were added after the words 'in made' by E.P. Ord. VIII of 1967, s. 3.

5. The words and commas within square brackets were substituted for the words 'such rent receiving interests' by E.P. Ord. IV of 1962.

6. The words, brackets, figures and commas within square brackets were substituted for the words 'as aforesaid' by E.P. Ord. VIII of 1967, s. 3.

7. The words within square brackets were inserted after the words 'proceeds of such collection' by E.P. Ord. IV of 1962.

8. The words within square brackets were inserted, ibid, after the words, figure and letter 'under section 6A.

9. The words within square brackets were substituted, ibid, for the words 'such collection'

10. The word 'rent receiving' was omitted, ibid.

11. The colon was substituted for the full stop at the end of clause (b) and thereafter the proviso was inserted, ibid.

encumbrance or charge created or any lease given in contravention of the provision thereof shall be null and void and the full value of any tree cut down or building demolished in such contravention shall be recoverable from the Mutwalli, Shebait or trustee as an arrear of rent or land revenue;

(ii) with effect from the 1st Baisakh, 1367 B.S., the amount payable under clause (a) shall be reduced by an amount equivalent to the amount which was, or is determined by the collector to have been, payable annually by the tenants, directly under such Mutwalli, Shebait or trustee, in respect of such interests immediately before acquisition on account of the road and public works cesses under the Bengal Cess Act, 1880, or on account of the local rates under the Assam Local Rates Regulation, 1879, as the case may be; and

(iii) in the cases where any such mutwalli, Shebait or trustee was entitled to receive, in respect of any interest referred to in sub section (1), immediately before at the acquisition of such interest, any rent or cesses on account of any tenure, holding or tenancy either from the Government or from another rent receiver whose interests in such tenure, holding or tenancy have been acquired and taken possession of by the Government under the provisions of this Act, such Mutwalli, Shebait or trustee shall be entitled to the adjustment, against his annual liability to the Government under this section, of a sum equivalent to the amount that was, or is determined by the collector to have been, payable to him annually on account of rent and cesses in respect of such tenure, holding or tenancy immediately before such acquisition, but no such adjustment shall be admissible with effect from the 1st Baisakh, 1367 B.S., on account of the road and public works cesses under the Bengal Cess Act, 1880, or on account of the local rates under the Assam Local Rates Regulation, 1879; and if the total amount available annually for such adjustment exceeds the amount of his total annual liability under this section, he shall be entitled to get the balance from the Government, after deduction, at the discretion of the Government, or any other sum due from him to the Government under any law of contract.]

Explanation.- For the purposes of clause (b), the amount may be calculated at the average rate of tax at which the assessment was made for the last time, before the date of acquisition, under the provisions of the Bengal Agricultural Income-tax Act, 1944.

(4) The tenants referred to in sub section (3) shall, in respect of the lands held by them subject to the payment of rents immediately before acquisition, be liable to pay rents in respect of such lands at the rates determined in the record-of-rights finally published under sub section (3) of section 19, subject to modification under section 53:

Provided that pending such final publication of the record-of-rights, the tenants shall pay rents for such lands at the rates shown in the preliminary rent-rolls prepared under the rules made under Chapter IV and in cases where such preliminary rent rolls also have not been prepared, the tenants shall pay rents at the rate existing immediately before acquisition till such preliminary rent rolls are prepared :

Provided further that when any such rent is shown either at an enhanced or at reduced rate in the record-of-rights finally published under sub-section (3) of section 19 or when any such rent is enhanced or reduced under section 53, the tenant shall be liable to pay the balance or entitled to the adjustment of excess payment against future rent payable by him, as the case may be, with retrospective effect.

(5) The arrears of rent and cesses realisable by a Mutwalli, Shebait or trustee from a

tenant under the provision of this section shall be recoverable as a public demand and the Mutwalli, Shebait or trustee may apply to the certificate officer in the prescribed manner for the recovery of any such arrears under the provisions of the Bengal Public Demands Recovery Act, 1913.

(6) The Mutwalli, Shebait or trustee shall pay to the Government any amount on account of excess payment of rent made by a tenant under sub section (4) remaining outstanding after adjustment under that sub section against the rent sub sequently payable by him during the period of management by such Mutwalli, Shebait or trustee.

(7) All sums payable by a Mutwalli, Shebait or trustee to the Government under sub-section (3) or sub-section (6) shall be recoverable as a public demand.

(8) The arrears of rent and cesses recovered by the Certificate Officer under sub section (5) shall be paid to the Mutwalli, Shebait or trustee concerned after deducting therefrom all sum due from him to the Government under sub-section (3) and sub-section (6).

(9) Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, in computing the period of limitation for the recovery of any arrears of rent and cesses payable by a tenant under sub section (4), a period of twenty four months on and from the date of the acquisition of the rent receiving interest to which such arrear relate shall be excluded.

(10). Every such Mutwalli, Shebait or trustee shall furnish to the collector in such form and at such time as may be prescribed, a statement of accounts of collection of rent and cesses made by him under this section during the preceding year and of expenditure incurred by him out of such collection.]

[1][(11) No court shall entertain any suit or application by any person claiming the benefits of this section in respect of any property or for a declaration that he is entitled to any such benefit unless such person has applied to the collector and the collector has passed a final order declaring that he is not entitled to such benefits :

Provided that, if no such final order is pased by the collector within a period of 3 months from the date of such application, the Mutwalli, Shebait or trustee, shall be entitled to bring a suit in the Civil Court after the expiry of the said period.]

PART III

[2]CHAPTER III

Special provisions regarding lands held in liu of service:

[1]. Acquisition of occupancy rights.- (1) Notwithstanding anything contained in any other law for the time being in force or in any contract, any person who holds under another person any land, for agricultural or horticultural purposes or for the puroses of his homestead, free of rent in consideration of some service to be rendered under the system locally known as Nankar, Chakran or the like shall, on and from the date of commencement of this Act, acquire a right of occupancy in all such lands so held by him subject to the payment of a fair and equitable rent to the person under whom he holds such alnds and the provisions of the Bengal Tenancy Act, 1885, or the Sylhet Tenancy Act, 1936, as the case may be, so far as they apply to occupancy raiyats, shall apply to him.

1. Sub-section (ii) was inserted by E.P. Ord. IV of 1962, section 2.

2. As to the protection of service Tenants from eviction and giving them the benefit of Chapter III of the East Bengal State Acquisition and Tenancy Act, 1950 (E.B. Act XXVIII of 1951), see the East Bengal Service Tenants (Protection) Act, 1952 (E.B. Act IX of 1952), sections 3 and 4.

(2) The fair and equitable rent, referred to in sub section (1), shall mean such rent not exceeeding the prevailing rate of rent paid by the occupancy raiyats for lands of a similar description and with similar advantages in the same village or in the neighbouring villages as may be agreed upon between such tenant and his landlord or, in the absence of such agreement, as may be determined by the collector on the application of such tenant or the landlord.

12. Removal of the homestad of a tenant in certain cases.- (1) Notwithstanding anything contained in section 11, where such tenant has his homestad within the homestead of his landlord, either he or the lanlord may, 1[within six months from the date of commencement of this Act], apply to the Civil Court having jurisdiction to entertain a suit for the possesssion of such land, for an order directing the removal of the homestead of such tenant.

(2) When an application is made under sub-section (1), the Court, after giving the parties an opportunity of being heard and after taking such evidence and making such enquiries as it thinks fit, if satisfied that the homestead of the tenant is situated within the homestead of the landlord, shall make the order applied for :

Provided that the Court, if it finds that the [illegible] cultivable land held by such tenant as an occupancy raiyat, whether by virtue of section 11 or otherwise, besides the homestead to which the application relates, is less than five standard bighas, shall assess such reasonable compensation to be paid to such tenant by the landlord as would, in the opinion of the Court, cover the cost of reoval of the homestead of the tenant to a new site, the cost of reconstruction of a similar homestead, the cost of the land required for such construction and such other incidental expenses as the Court thinks fit; and it shall not make an order for such removal until the landlord deposits in the Court the amount of compensation so assessed for payment to the tenant, or the tenant admits before the Court in writing that he has received the amount from the landlord out of Court.

(3) An order under sub-section (2) shall be deemed to be a decree for ejectment against such tenant; and no appeal shall lie against such order.

13. Restoration of agricultural land in certain cases.- (1) If a person has been ejected after the 7th day of April, 1948, otherwise than by a decree or order of a civil Court or an order of the collector or of any Revenue officer empowered by the collector, from any agricultural or horticultural land held by him free of rent in consideration of some service to be rendered under any system referred to in sub-section (1) of section 11, such person may, within six months from the date of commencement of this act, apply to the collector for the restoration of such land to him.

(2) When an application has been made under sub-section (1), the collector, after giving the parties an opportunity of being heard and taking such evidence and making such enquiries as he thinks fit, if satisfied that the applicant was so ejected after the said date from such land so held by him shall pass an order restoring such land to the applicant with effect from such date not being later than the first day of the agricultural year next following the date of the order as the collector thinks fit.

(3) If the person in possession of such land does not give up its possession to the

1. For the purpose of sub section (1) of section 4 of the East Bengal Service Tenants (Protection) Act, 1952 (E.B. Act IX of 1952), the expression "within six months from the date of commencement of this Act" shall be deemed to have been substituted by the expression "within three months from the date of commencement of the East Bengal Service Tenants (Protection) Act, 1952".

applicant with effect from such date, the collector shall, on the application of such applicant, eject such person and place such applicant in possession of such land :

Provided if such person be a person other than the landlord, he shall get reasonable compensation, as determined by the collector, from the landlord.

(4) When any agricultural or horticultural land is restored to a person under this section, the provisions of section 11 shall apply to such land.

14. **Appeal.**- Any person who is agrieved by an order of the collector under sub-section (2) of section 11 or under sub-section (2) of section 13, may prefer an appeal to the District Judge having jurisdiction over the area within thirty days from the date of such order; and the decision of the District Judge having jurisdiction over the area, on such appeal, shall be final.

15. Miscelleneous.- An application under sub-section (2) of section 11, sub-section (1) of section 12 or sub-section (1) of section 13 shall be in such form and contain such particulars as may be prescribed, and shall be accompanied by process fee of the prescribed amount.

16. Saving as to certain lands.- Nothing in this Chapter shall apply to any land held within the boundaries of a tea estate of any other industrial organisation.

PART IV

CHAPTER IV

Preparation of record-of-rights

17. **Preparation of record-of-rights.**- (1) The Government may, with a view to acquisition under the provisions of this Act of the interests of all rent receivers within any district, part of a district or local area and of such other interests in land therein as are liable to be acquired under the provisions of this act, and with a view to the assessment of compensation payable for all such interests including the interests which have already been acquired under Chapter II, make an order directing -

(a) that a record-of-rights be prepared in respect of such district, part of a district or local area, or

(b) that the record-of-rights, last prepared and finally published under Chapter X of the Bengal Tenancy Act, 1885, in respect of such district, part of a district or local area, be revised,

by a Revenue officer in accordance with the provisions of this Chapter and with such rules as may be made in this behalf by the Government.

(2) If any order has been made under section 101 of the Bengal Tanancy Act, 1885, [1][or, under section 117 of the Sylhet Tenancy Act, 1936] for the preparation of a record of rights in respect of any district, part of a district or local area, but the preparation of such record of rights has not been completed or such record of rights has not been finally published at the time when an order is made under sub section (1) for the preparation or revision of a record of rights in respect of such district, part or area, then on the making of an order under the dsaid sub section, all further proceedings relating to the preparation of the record of rights under the said Act shall be stayed; and such record

1. The words, commas and figures within square brackets were inserted by E. B. Ord. III of 1956, s. 5.

of rights shall be prepared in accordance with the provisions of this Chapter and with such rules as may be made in this behalf by the Government.

Provided that any proceedings in respect of the preparation of such record of rights commenced under Chapter X of the Bengal Tenancy Act, 1885, [2] or under Chapter IX of the Sylhet Tenancy Act, 1936], and undertaken prior to the publication of the draft of such record in rights under section 103A of the [3][Bengal Tenancy Act, 1885, or under section 119 of the Sylhet Tenancy Act, 1936, as the case may be], shall, for the purposes of the preparation of such record of rights under this Chapter be deemed to have been commenced and undertaken under this chapter.

(3) A notification in the official gazette of an order under sub section (1) shall be conclusive evidence that the order has been duly made.

Comments

The notification contemplated under sub-section (3) of section 17 is a notification giving notice of the intention of Government to take up the preparation of new record of rights for the assessment of compensation payable for the interest acquired under the act and has a conclusive evidence that the order has been made for the preparation or revision of record of rights (16 DLR (SC) 667).

Functions under these sections.

There are two provisions under the State Acquisition and Tenancy Act regarding preparation of the record-of-rights. Under section 19 of the State Acquition and Tenancy Act in view of the notification of the Government under section 17 of the Act a draft record of rights was prepared for the purpose of acquisition of the rent receiving interest or under the same provisions the record of rights that was prepared under Chapter X of the Bengal Tenancy Act would have been revised in respect of any district, part of a districct or of any local area as the Government would deem fit and necessary. The particulars which were required to be incorporated under those draft record of rights have been mentioned in the rules framed for the purpose (36 DLR 195).

The presumption of correctness as to C. S. khatian under the bengal tenancy Act is not available with regard to the State Acqusition Khatian. There is no presumption of correctness in respect of State Acquisition Khatian like the one under section 103B of B.T. Act (21 DLR Dhaka 854).

In the case reported in 130 DLR (AD) 81 it is held that according to section 103B (5) of the Bengal Tenancy Act every entry in a record of right finally published shall be evidence of the matter referred to in such entry and shall be presumed to be correct until it is proved to be incorrect.

In 33 DLR (HC) it is held that the presumption of correctness as available on the strength of section 103B (5) of the Bengal Tenancy Act has got to be rebutted by the person who alleges it (38 DLR 327).

In the absence of final publication of record of right as provided in sections 19 and 144 there cannot be any presumption as to it correctness.

Purposes for which record of rights are prepared under Chapter IV as well as those prepared under Chapter XIV of the State Acqlusition And Tenancy Act. In the absencce of

1. The words, commas and figures within square brackets were inserted by E. B. Ord. III of 1956, s.6.
2. The words, commas and figures within square brackets were substituted, ibid for the words 'said Act'.

any materials on record to the effect that the separation of original tenancy has been effected as provided in section 177 (1) (c) a co-sharer's right to pre empt can not be denied (36 DLR 193).

18. Particulars to be recorded in the record-of-rights.- When an order is made under section 17, the Revenue officer shall record in the record-of-rights to be prepared or revised in pursuance of such order, such particulars as may be prescribed.

19. Draft and final publication of the record-of-rights.- (1) When a record of rights has been prepared or revised so as to contain or include therein the particulars referred to in section 18, the Revenue officer shall publish a draft of the record of rights so prepared on revised in the prescribed manner and for the prescribed period and shall receive and consider any objections which may be made to any entry therein or to any omission therefrom during the period of such publication.

(2) Any person aggrieved by an order passed by Revenue officer on any objection made under sub section (1) may appeal to the prescribed Revenue Authority not below the rank of an Assistant Settlement Officer in such manner and within such period as may be prescribed.

(3) When all such objections and appeals have been considered and disposed of according to such rules as the Government may make in this behalf, the Revenue officer shall finally frame the record and shall cause such record to be finally published in the prescribed manner and the publication shall be conclusive evidence that the record has been duly prepared or revised under this chapter.

(4) When a record of rights has been finally published under sub-section (3), the Revenue officer shall, within such time as the Board of Revenue may fix in this behalf, make a certificate stating the fact of such final publication and the date thereof, and shall date and subscribe the same with his name and official title.

Comments

A Revenue Officer acting under section 19(1) is not a Court (14 DLR 25).

High Court Division's failure to appreciate the approach and findings of the lower appellate Court. A large part of the judgment is devoted to defendant's weakness in the case including rejection of objection under section 19(1) of State Acquition and Tenancy Act (41 DLR(AD)3).

Leave was granted to consider the submission that the findings of fact arrived at by the lower appellate Court on consideration of evidence have been illegally disturbed by the learned judge of the High Court Division on misconstruction of documentary evidence particularly the rent receipts produced by the parties and also on wrong view of law taken by the learned Single Judge, in respect of the proceeding under section 19(1) of the State Acuisition and Tenancy Act (41 DLR (AD) 3).

Leave was granted to consider whether, in view of the provisions of section 22 of the State Acquisition and Tenancy Act, 1950 the learned Judges of the High Court Division were wrong in holding that the lands in question were not liable to assessment of rent.

In view of the provisions of section 22 of the Act all lands are subject to assessment and payment of rent (40 DLR (AD) 189).

In view of the express provisions of section 22 even the Government cannot by an order or agreement, exempt any land from assessment of rent for the words used in the section are mandatory, namely, "all land..... shall be subject to the payment of fair and equitable rents (40 DLR (AD) 189).

of rights shall be prepared in accordance with the provisions of this Chapter and with such rules as may be made in this behalf by the Government.

Provided that any proceedings in respect of the preparation of such record of rights commenced under Chapter X of the Bengal Tenancy Act, 1885, [2][or under Chapter IX of the Sylhet Tenancy Act, 1936], and undertaken prior to the publication of the draft of such record in rights under section 103A of the [3][Bengal Tenancy Act, 1885, or under section 119 of the Sylhet Tenancy Act, 1936, as the case may be], shall, for the purposes of the preparation of such record of rights under this Chapter be deemed to have been commenced and undertaken under this chapter.

(3) A notification in the official gazette of an order under sub section (1) shall be conclusive evidence that the order has been duly made.

Comments

The notification contemplated under sub-section (3) of section 17 is a notification giving notice of the intention of Government to take up the preparation of new record of rights for the assessment of compensation payable for the interest acquired under the act and has a conclusive evidence that the order has been made for the preparation or revision of record of rights (16 DLR (SC) 667).

Functions under these sections.

There are two provisions under the State Acquisition and Tenancy Act regarding preparation of the record-of-rights. Under section 19 of the State Acquition and Tenancy Act in view of the notification of the Government under section 17 of the Act a draft record of rights was prepared for the purpose of acquisition of the rent receiving interest or under the same provisions the record of rights that was prepared under Chapter X of the Bengal Tenancy Act would have been revised in respect of any district, part of a district or of any local area as the Government would deem fit and necessary. The particulars which were required to be incorporated under those draft record of rights have been mentioned in the rules framed for the purpose (36 DLR 195).

The presumption of correctness as to C. S. khatian under the bengal tenancy Act is not available with regard to the State Acqusition Khatian. There is no presumption of correctness in respect of State Acquisition Khatian like the one under section 103B of B.T. Act (21 DLR Dhaka 854).

In the case reported in 130 DLR (AD) 81 it is held that according to section 103B (5) of the Bengal Tenancy Act every entry in a record of right finally published shall be evidence of the matter referred to in such entry and shall be presumed to be correct until it is proved to be incorrect.

In 33 DLR (HC) it is held that the presumption of correctness as available on the strength of section 103B (5) of the Bengal Tenancy Act has got to be rebutted by the person who alleges it (38 DLR 327).

In the absence of final publication of record of right as provided in sections 19 and 144 there cannot be any presumption as to it correctness.

Purposes for which record of rights are prepared under Chapter IV as well as those prepared under Chapter XIV of the State Acqlusition And Tenancy Act. In the absencce of

1. The words, commas and figures within square brackets were inserted by E. B. Ord. III of 1956, s.6.
2. The words, commas and figures within square brackets were substituted, ibid for the words 'said Act'.

Articles 3 and 4 of the order run as follows :

"3. Notwithstanding anything to the contrary in any other law for the time being inforce,-

(a) no family or body shall be entitled to retain any land held by it in excess of one hundred standard bigh as in the aggregate and all lands held by it in excess of that quantity shall be surrendered to the goverjment; and

(b) no family or body shall be entitled to acquire any land by purchase, inheritance, gift, heba or otherwise which, added to the land already held by it exceeds one hundred standard bighas in the aggregate.

Provided that the limitation imposed by clause (a) shall not apply to any land held under wakf, debuttor or any other religious or charitable trust, if the income from such land is exclusively dedicated to religious or charitable purposes without reservation of any pecuniary benefit for any in individual:

Provided further that if the income from any such land is partly dedicated to religious or charitable purposes and partly reserved for the pecuniary benefit of any individual only such portion of the land, to be selected in the prescribed manner, shall be exempted from such limitation, as would yield the income exclusively dedicated to religious or charitable purposes.

4. The government may relax the limitation imposed by Article 3, to such extent and subject to such conditions as it thinks fit, in the following cases, namely ;-

(a) a co-operative society of farmers where the members thereof surrender their ownership in the lands unconditionally to the society and cultivate the lands themselves;

(b) land used for cultivation of tea, rubber or coffee or covered by orchards;

(c) an industrial concern holding land for the production of raw materials for manufacture of commodities in its own factories;

(d) any other case where such relaxation is considered necessary in the public interest."

Further, in the land Reforms Ordinance 1984 (Ordinance No. X of 1984), the total quantity of land which may be held by a family has been reduced to 60 (sixty) standard bighas. Section 4 of the Ordinance runs as follows :

"4. **Limitation on acquisition of agricultural land.**- (1) No malik who or whose family owns more than sixty standard bighas of agricultural land shall acquire any new agricultural land by transfer, inheritance, gift or any other means.

(2) A malik who or whose family owns less than sixty standard bighas of agricultural land may acquire new agricultural land by any means, but such new land, together with the agricultural land owned by him, shall not exceed sixty standard bighas.

(3) If any malik acquires any new agricultural land in contravention of the provisions of this section, the arrea of land which is in excess of sixty standard bighas shall vest in the government and no compensation shall be payable to him for the land so vested, except in the case where the excess land is acquired by inheritance, gift or will.

(4) Compensation for the excess land payable under sub-section (3) shall be assessed and paid in such manner as may be prescribed :

Provided that where such compensation is payable only for a portion of the excess land, the assessment and payment of compensation shall be made for such portion of the excess land as the malik may specify in this behalf."

So in view of the latest changes no malik or whose family owns more than sixty standard bighas of agricultural land shall acquire any new agricultural land by transfer, inheritance, gift or any other means].

[1][(2a) Notwithstanding anything contained in any other law for the time being in force or in any instrument or in any judgment or decree or order of any Court lands of the classes referred to in the clauses (a) and (b) of sub-section (2) do not include and shall be deemed never to have included -

(i) any land or building in a hat or bazar, or,

(ii) any fishery other than a tank constructed solely by process of excavation, or,

(iii) any land consisting of forest, or,

(iv) any land actually in use for a ferry.]

(3) Allotments of lands, of which a rent receiver, a cultivating raiyat, a cultivating under-raiyat or a non-agricultural tenant is entitled to retain possession under clause (b) of sub-section (2), shall be made by the Revenue officer according to the choice of such rent receiver, cultivating raiyat, cultivating under raiyat or non-agricultural tenant or, where no such choice is exercised within a prescribed period, according to the rules to be made in this behalf by the Government :

[2][Provided that in exercising such choice such rent receiver, cultivating raiyat, cultivating under raiyat or non-agricultural tenant shall retain the entire area of land held by each of the other members of his family if it is ten standard bighas or less and to the extent of at least ten standard bighas if it exceeds that quantity and that in allotting lands to a family, the Revenue officer shall record them in the names of the persons who actually hold them :]

[3][Provided further that when a rent-receiver, a cultivating raiyat, a cultivating under raiyat or a non-agricultural tenant or any member of his family has mortgaged any land to the Agricultural Development Finance Corporation established under the Agricultural Development Finance Corporation Act, 1952, or to the *House Building Finance Corporation established under the House Building Finance Corporation Act, 1952, or to ** Agricultural Bank of Pakistan established under the Agricultural Bank Act, 1957, he shall, when exercising choice under this section, be bound to include in his choice all lands, so mortgaged, of the classes and up to the limit he is entitled to retain under sub-section (2) and when such a rent receiver, a cultivating raiyat, a cultivating under raiyat or a non-agricultural tenant has already exercised his choice under this section, but no Compensation Assessment roll in respect of his excess khas land has been finally published, he shall be required to revise his choice in accordance with the provisions of this proviso.]

(4) Notwithstanding anything contained in sub-section (2), a rent receiver, a cultivating raiyat or a cultivating under raiyat or a group of rent receivers, cultivating raiyat or cultivating under raiyats who has or have undertaken large scale farming on a co-operative basis or otherwise by the use of power driven mechanical appliances, or large scale dairy farming may, if he is or they are certified in that behalf by the prescribed Revenue Authority, retain possession of and hold such quantity of lands in excess of the

1. Sub-section (2a) was subs. for the explanation by E.P. Ord. XII of 1960, s. 6.
2. The proviso was added by E.P. Ord. XLIV of 1958, s. 8.
3. The proviso was added by E.B. Ord. XXXIX of 1959, s. 4.

limit specified in the said sub-section as may be specified in the certificate granted by such Revenue Authority :

Provided that such a certificate shall be subject to revisions by the said Revenue Authority at such intervals as may be fixed in this behalf by the Government.

[2][(4A) Notwithstanding anything contained in sub-section (2), a person or persons holding land for the purposes of the cultivation and manufacture of tea or coffee or the cultivation of rubber or a company holding land for the cultivation of sugarcane for the purpose of manufacture of sugar by that company may, if he or it is or they are certified in that behalf by the prescribed Revenue Authority, retain possession of and hold such quantity of land in excess of the limit specified in the said sub section as may be specfied in the certificate granted by such Revenue Authority :

Provided that such a certificate shall be subject to revisions by the said Revenue Authority at such intervals as may be fixed in this behalf by the Government [3][:]

Provided further that for the purpose of this sub section, a derelict tea garden shall not be deemed to be land held for the purpose of the cultivation and manufacture of tea.

[4][(4B) Notwithstanding anything contained in sub-section (4) and (4A) or in section 39, 43 and 44 or in any other law for the time being in force, the land held under a certificate granted under sub section (4) or (4A) by the prescribed Revenue Authority shall absolutely vest in the Government on the date when the Government shall take a decision in favour of the certificate holder on an application submitted by him for granting a lease on a long term basis in respect of such land, wherein the certificate holder gave up the claim of compensation that would have been assessed under section 39 for the purpose of formal acquisition of such land, and such land may be leased out under the second proviso to sub section (1) of section 81 to the certificate holder without charging any premium therefor, on such terms and conditions as may be set forth in the lease by the Government by terminating the certificate.

(5) (i) Noting in sub-sections (1), (2) and (3) of this section shall apply -

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(b) to any land covered by buildings or structures and necessary adjuncts thereto as are used for the purpose of any large scale industry with such other lands as are used for growing raw materials therefor, or

(c) to so much of the lands held under debutter, wakf, wakf-al-al-aulad or any other trust as is exclusively dedicated and the income from which is exclusively applied to religious or charitable purposes without reservation of pecuniary benefit for any individual.

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1 Sub-section (4A) was inserted by E.B. Ord. XXXIX of 1959, s.4.

• Sic-Bangladesh House Building Finance Corporation established under the Bangladesh House Building Fianance Corporation Order, 1973 (P.O. No [illegible] 1973).

•• Sic Bangladesh Krishi Bank established under the Bangladesh Krishi Bank Order, 1973 (P.O. No. 27 of 1973).

2. The colon was subs. for the full stop at the end of sub-section (4A) and thereafter the proviso was added by E.P. Ord. I of 1971, s.2.

3. Sub-section (B4) was added by E.P. Ord. I of 1971, s. 2.

4. Sub-clause (a) was omitted by E.P. Ord. XV of 1961, s. 4.

(ii) Where, under any debutter, wakf, wakf-al-al-aulad or any other trust, the income from the lands covered by such trust is partly dedicated for religious or charitable purposes and partly reserved for the pecuniary benefit of any individual, only such portion of the lands, as may be selected in accordance with the rules to be made in this behalf by the Government, shall come within the purview of sub-clause (c) of clause (i).

Explanation - For the purpose of sub-section (2) of this section -

(a) a rent receiver, cultivating raiyat, cultivating under raiyat or non-agricultural tenant shall be deemed to include a group of them who are members of the same family; and

(b) a family shall, when used in relation to a rent receiver cultivating raiyat, cultivating under raiyat, or non-agricultural tenant, be deemed to consist of such rent receiver cultivating raiyat, cultivating under raiyat or non agricultural tenant and all persons living in the same mess with and dependant upon such rent receiver, cultivating raiyat, cultivating under raiyat or non agricultural tenant, but does not include any servant or hired labourer living in the same mess.

[1][(6) The provision of sub-clause (c) of clause (i) of sub-section (5) and clause (ii) of that sub-section shall not apply and be deemed never to have applied to any land on which hats or bazars are held or which consists of forests or fisheries or ferries.].

Comments

Fresh notification for acquisition of katcharyghar not necessary. It is not correct to say that if and when the Provincial Government decides to acquire the kaTcharyghar it will be necessary for them to issue a fresh notification under section 3(2) of the Act. Action already taken, if supplimented by an order of the Provincial Government specifying the property in question as one which they have decided to acquire, will effectually serve the purpose (16 DLR (SC) 125).

Kutcharyghar does not become acquired upon the issue of notification under section 3(2). It must be acquired upon an express decision to that effect (16 DLR (SC) 125).

Kutchary buildings and contiguous vacant land with a hat, if transferable.

A kutchary would come within the category of retainable khas land, unless the provincial Government has decided to acquire. The Government will have to acquire under a notification under section 3(2), which is the only manner prior to a final publication of the assessment rolls by which such property can be acquired (15 DLR 703).

Acquisition of kutchery by the Government must be published otherwise it comes within the category of retainable khas lands (15 DLR 62).

Maximum limit of retainable land shrinks to the size, that is, 375 bighas mentioned in section 20 when chapter XIII comes into play.

No arrangement exists by which a tenant would become automatically dispossessed of his non-retainable clauses of lands (15 DLR 37).

Governments' taking away of khas lands within the area of 375 bighas, unlawful (22 DLR 277).

Acquirable lands which are not retainable under section 20 do not vest in the Government on the publication of compensation assessment-roll without assessment of the compensation, that, is, such lands must be included in the compensation assessment - roll (17 DLR 277).

1. Sub-section (6) was added by E.P. Ord. XII of 1960, s. 6.

From the words used in clause (ii) of section 20(2) (b), it is clear that hat and bazar are not included in the said clause (9 DLR 674).

A hat where marketing of various articles take place and which has structures on it is not covered by clause (iii) of section 20(2) (b) (25 DLR 476).

By virtue of section 20 (2a) (b) hats or bazars stand acquired no fresh notification under section 3(2) is necessary (15 DLR (SC) 139).

Hat, if necessaries of life are not sold on a land either daily or on particular days of the week the land cannot be a hat (20 DLR 18).

The properties of wakfs, wakf-al-al-aulad and debutter, which were religious institutions within the meaning of article 18, Constitution of Pakistan (1956) cannot be acquired under the impugned Act viz East Bengal State Acquisition and Tenancy Act 1950 (As held earlier by the High Court) (10 DLR 96).

Dedication of property to religious trusts - Dorument to be read as a whole to find out the real purpose.

Where a document shows that the property has been substantially dedicated to religious or charitable purpose, it becomes a religious trust notwithstanding the use of the words lessor, lessee or rent in the document. (1962) 14 DLR 680).

Clause C(2) : Charitable and religious institutions are protected (Ibid).

The debutter and wakf properties are not affected by notification dated 9.5.59. (1964) 16 DLR (SC) 457).

Whether acquisition of debutter property by notification No. 7164 L.R dated 9.5.59 valid.

If a valid debutter has been created in respect of properties by a dead, then these properties would not be affected by the said notification (ibid).

Non retainable lands.

So much of land under wakf, debutter, wakf-al-al-aulad or any other trust as is exclusively dedicated and income of which is exclusively applied to religious or charitable purpose without reservation of pecuniary benefit for any individual. The State can acquire wakf properties like the other properties only they have to qualify and restrict such acquisition in the manner provided in section 20 (5). (1966) 18 DLR 727).

Acquisition of wakf when fundamental right not in existence.

Religious institutions such as wakfs or debutters, guaranteed under the Fundamental Rights are not acquirable under the East Bengal State Acquisition and Tenancy Act, but when fundamental rights are not in existence such acquisition will be valid in law and subsequent enactment of the fundamental right will not invalidate such acquisition (18 DLR 727).

Rent receiving interest and non-retainable khas lands of wakf vested in the Government from 14th April, 1956 notifications and not excepted by 9th May, 1959 notifications.

Under the notifications of the 2nd April, 1956, the rent receiving interests and the non-retainable khas lands at least of the wakfs and debuttors having rent receiving interests vested in the Provincial Government on and from 14th April, 1956.

The legal consequence under section 44, amongs others, is that all acquirable interests "other than the interests which have already been acquired under Chapter II" vest in Government. (1967) 19 DLR 106).

Governments acknowledgement by the notifications of 9.5.59 that they did not acquire the wakfs etc. by the notifications of 2.4.56. In effect notifications of 9.5.59 are re-

issuance of notifications of 2.4.56 and expressly excluded all the properties of religious institutions.

The (majority) decision in Mahdi Ali Khan Panni's case (11 DLR (SC) 318) was confined to the set of appeals before the Supreme Court. No declaration in the judgment that all acquisitions of 2.4.56 valid. (1967) 19 DLR 106)

In reissuing the notices on 9th May, 1959; the Government exempted those properties which had been held by the Supreme Court in Jibendra Kishore's case 9 DLR (SC) to be protected from acquisition.

For this reason the notifications of 9th May, 1959, were the reissuance of the notice of 2nd April, 1956, without the vitiating inclusion of properties held by the Supreme Court to be exempted from acquisition under the Act as it stood (1967) 19 DLR 106).

Notifications of 2nd April, 1959, did not extinguish the right of any petitioner to challenge the validity of the acquisition purported to be made by those notifications (1967) 19 DLR 106).

Steps to be taken for actual physical possession not taken by the Government notification does not amount to acquisition. (1967) 19 DLR 106).

When actual physical possession of wakfs not taken they are infact after 10.1.64 when fundamental right regarding freedom of religious rights come into being (1967) 19 DLR 106).

(Contra : minority view) - Government notifications of 2.4.56 as well as of 9.5.59 with regard to the acquisition of wakf and debutter estates. Latter notifications did not exempt wakfs from acquisition. Sattar, J. (Ali, J. Agreeing with him).- It is impossible to hold that the Government decided when they issued the notifications of the 9th May, 1959, to exempt all wakf and debuttor estates from acquisition. the intention appears to be not to acquire any wakf or debuttor property which had not been till then acquired.

Protection offered by Article 18 of the 1956 Constitution having disappeared with its abrogation, while appeals were pending before the Supreme Court, Government's acquisitions under section 3(1)(2) could not be challenged. This also implies that all wakfs stood acquired under 1956 Constitution. (1967) 19 DLR 106).

Acquisition revives when fundamental rights are gone. Subsequent introduction of fundamental right not being retrospective does not help. Effect of Supreme Court's decision in Mehdi Ali Khan's case.

If acquisition of such properties takes place under the Act at a time when no such fundamental right is in force the same cannot be challenged on the basis of fundamental rights having been brought in force subsequent to the acquisition (1967) 19 DLR 106).

Wakf Estate- Distribution of khas lands of wakf estate among its beneficiaries not permissible.

There is no authority under the E. B. State Acquisition And Tenancy Act for distribution of khas lands among the beneficiaries of a wakf estate. The wakf estate is itself a person and can retain possession of such quantity of khas lands as is permissible under the Act. The order of the Revenue Officer distributing khas lands of the wakf estate amongst the beneficiaries of the wakf estate was bad in law (1969) 21 DLR 886).

The explanation of family as given under explanation (b) of section 20 (5) of the Act cannot be applied, in the case of the family of a wakeef, for disposal of the portions of the

property which devolve on all the legal heirs and representatives of the wakeef. The position of a mutawalli is as good as other legal heirs and representatives of the wakeef. In that view of the matter mutaalli alone cannot reap the benefit of the property set apart as secular property. (1970) 22 DLR 327).

In a combined wakf, part of the lands consisting of the wakf being dedicated to charitable purposes and part for the benefit of the wakeef's heirs and descendants. The area for the benefit of the wakeef's heirs and descendants shall be distributable amongst those heirs and descendants. The area for the benefit of the wakeef's heirs and descendants shall be distributable amongst those heirs and descendents; the Mutawalli as such shall have no share in those lands (22 DLR 376).

But where the property is dedicated partly for religious or charitable purpose and partly reserved for the pecuniary benefit of any individual only such portion comes within section 20 (5) (1) (c) as may be in accordance with the rules on behalf of Government. As to wakf and debutter properties excluded by section 20(5) acquisition of their khas lands must go and to his extent the notifications were invalid (18 DLR 727.

The Provincial Government have no right to acquire under the provisions of State Acquisition andTenancy Act, by virtue of their notifiation No. 4845 L.R. dated 2.4.56, the hats owned and possessed by persons who are not rent receiver (9 DLR 596).

A hat where marketing of various articles take place and which has structures on it is not covered by clause (iii) of section 20(2)(b).

The hat under consideration is a hat within the meaning of clause (12) of section 2 and it sists regularly once in a week where people assemble for marketing their commodities and making purchases. Such a hat does not fall within the category of vacant non-agricultural land under section 20(2) (b) (iii) of the Act (25 DLR 476).

Bazar with some structures on which are held once in the morning every day can be acquired but hats which remain vacant except being used for sale of cattle once a week fall within the definition of vacant non-agricultural land under sub-clause (iii) clause (b) of section 20(2) and, therefore, such hats cannot be acquired under section 3(2) of the Act (11 DLR (SC) 316).

The term fishery means the business of catching fish and the right connected therewith. In order to constitute a closed fishery, the land concerned must contain so much water throughout the year as is sufficient for enabling rearing and catching of fish therein and, that too, in pursuit of fishing as a trade, business, occupation or industry (20 DLR 435).

Right of fishery in a navigable river not a profit arising out of land cannot be acquired under the Act (11 DLR 145).

Forests and fisheries not being specified in the notification of the 2nd April, 1956, it is open to any person to move the authority to release any properties which have been seized and to which the Act does not apply (10 DLR (SC) 80).

Inland fishery falls within the definition of 'estate' and 'land' and as such can be acquired (11 DLR 145).

Hat - Distinctive feature of hat :

It is a place for assembling persons daily or on particular days in aweek for purposes of buying or selling articles of general household use. The setting up of a few shops, cannot be described as establishing a hat or bazar (15 DLR 5).

In the present case a number of persons set up a few shops immediately adjacent or in close proximity to the old hat which had thus gradually extended itself.

Held : Unless there is independent evidence to show that a hat was set up as a result of all these persons acting in concert the extended portion in continuity of the old hat cannot be said to be a hat within the meaning of section (2) of the E.P. Hats and Bazars (Establishemnt and Requisition) Ordinance (15 DLR 5).

No fresh notification for acquisition of a hats and bazars necessary.

No fresh notification for the acquisition of interest of tenants in hats and bazars was necessary, because, that was to follow as a consequence of the publication by operation of the provisions of the statute itself, and it is for this reason that in sub-section (3) of section 44 the language used is that they shall be deemed to vest absolutely in the Provincial Government, that is to say, that as a legal consequence of the notification of the final publication of the compensation assessment-roll they shall be treated as if acquired and vested in the Government (16 DLR 281).

In view of the retrospective effect by Ordinance No. XII of 1960 in secction 20 by the incorporation therein of sub-section 2(a) which had the effect of excluding hats and bazars from the category of retainable lands from the very beginning, the hats and bazars in the khas possession of rent-receivers became vested in the Government from the date of the notification in 1956 under sub-section (2) of section 3 of the Act (16 DLR (SC) 281).

The process of acquisition becomes final only after publication of the notification in the official gazette declaring that the compensation assessment roll has been finally published. the property vests in the Government only after such notification is in the Government only after such notification is published. The present case does not come within the mischief of P.O. 90/72 since the plaintiff seems to be in possession of the property and there is absence of the required notification (43 DLR 264).

Time of vesting of hats and bazars.

Hats and bazars vested in the Government with effect from the date of notification in 1956 under section 3(2) and so far as raiyats, etc. are concerned vesting took place after the final publication of the compensation assessment roll and its final publication under section 44(3). (1973) 25 DLR 248).

Hats and bazars pass to the Government after introduction of sub-section (2A) to section 20 (20 DLR 769).

Hats and bazars pass to the Government only under section 20(2a).

Apart from the general provisions of section 20 of the State Acquition and Tenancy Act, 1950 there is no other special statutory provisions authorising the Government to acquire and to take over any hat and bazar and market already remaining under the ownership and possession of a local authority and a Pourashava. Question is whether any land or building in a hat or bazar which inevitably includes a market as such can be retained by a local authority like a Pourashava (32 DLR 156).

Tanks in which fish is reared retainable in view of the provision of section 20 (2a) of the Act. Although the plaintiffs have averred that people of the bazar and villagers use the water of the tanks, yet, in our opinion, it does not make the tanks part of the bazar. By use of water of the tanks no right whatsover has been created in favour of the users. The plaintiffs have succeeded in establishing a *prima facie* case that the tanks are retainable khas lands of the plaintiffs.

When actual area is known and the stage of exercising the option is over, then the khas lands of rent receiver become liable to be acquired (1964 PLR 14 Dhaka 80).

When the rent receiver does not exercise his right of choice after notice served on him, the Revenue Officer can acquire the khas lands in excess of the limit imposed by law. If the procedure is not followed the acquisition will be illegal. (13 DLR 496; 16 DLR 92).

Land in excess of the permisible limit when can not be retained.

The owners formed a Co-operative Society and filed a title suit being T.S. No. 441 of 1966 for permanent injunction to restrain the Government from interfering with their excess land and allotting the same to any other person. Their main contention was that on co-operative basis they have undertaken to do large scale farming The Trial Court granted plaintiff's prayer for temporary injunction.

Basis of the plaintiff's prayer was that he was entitled to a certificate for retaining the excess land. Such certificate was, in fact, granted but was later on cancelled by the board of Revenue. That matter was challenged and ended with the judgment of Supreme Court of Pakistan.

The order of cancellation was challenged in a Writ petition No. 169 of 1964 but the writ petition was dismissed and the order of cancellation of the certificate was maintained. An appeal against the said order of the High Court was dismissed by the Supreme Court which observed that the exrent receivers got no legal right to grant of a certificate under sub-section (4) of section 20. After this decision of the Supreme Court no suit for permanent injunction against the Government is maintainable whether it is filed by the ex rent receivers directly or in the name of their co-operative society.

While the certificate by the Revenue Authority which is revisable permits the retention of the quantity of land in excess of the permissible limit, such certificate does not confer any right upon the certificate holder because sub-section (4B) says the land held under a certificate under sub-section (4) or (4A) by the prescribed Revenue Authority shall absolutely vest in the Government and the certificate holder on an application submitted by him for granting a lease on a long term basis in respect of such land and such land may be leased out to him under certain conditions.

The purport of the law clearly is this that the certificate holder becomes the lessee under the Government and he is to give up this claim of compensation which otherwise would have been admissible to him. Such being the right and privilege the question is whether the plaintiff can claim any injunction restraining the Government from interfering in the setting of such facts when admittedly no certificate is in existence. The opinion is that no right inheres in him so as to entitle him to an injunction.

In this case no case has been made out for temporary injunction nor any certificate is in existence and therefore the question what is the distinction between the temporary injunction or *status quo* or whether there is any distinction at all becomes academic (35 DLR (AD) 98).

Withdrawal of the notification in question and fresh notification in the purported exercise of power derived from the Act of which the relevant provisions must now be treated as being in full force and operation. (1959) 11 DLR (SC) 318.

In Jibendra Kishore's case, the Supreme Court declared the law that in view of Article 18(b) of the Constitution wakfs and wakfs al-al-aulad cannot be acquired by the Government under E.B. State Acquisition Act. The High Court on remand following the law

as laid down by the Supreme Court correctly held that expropriatory notifications for acquisition of such wakfs are void. What the Provincial Government seeks in the guise of appeal against that High Court's previous judgement is a review which is entirely incompetent (11 DLR (SC) 318).

Section 3 or section 37 do not offend against Article 5 or Article 18 of the Constitution of 1956, so far as wakf and debutter estates are concerned (9 DLR (SCC) 21).

The notification issued by the Provincial Government under th authority of E. B. Act XXVIII of 1951 for the acquisition of the estates having been issued under a void law were themselves void, and although that law regained operation in that respect upon the making of the proclamation on 10th October, 1958, the notifications themselves did not regain validity. Therefore despite the fact of the abrogation of the late constitution and the promulgation of the laws (continuance in force) Order, the High Court on remand, held that the acquisitions by the Government wakf and debutter were void, being based on the law declared by the Supreme Court in Jibendra Kishore's case, was perfectly legal and valid (9 DLR (SC) 21).

In view of Article 18(6) of the constitution of 1956 properties of religious institutions cannot be acquired by Government under S.A.T. Act. The High Court correctly held that expropriatory notification for acquisition of such wakf or debutter are void (Ibid).

Hats and bazars of the rent receivers vested in the Government from the date of notification of acquisition and those belonging to the tenants vested in the Government from the date of final publication of compensation assessment roll (35 DLR 299).

21. **Payment of rent for land retained in possession.**- All lands, of which a rent receiver, a cultivating raiyat, a cultivating under raiyat or a non-agricultural tenant retains possession under section 20, shall be held on payment of such fair and equitable rent as may be determined under the provisions of this Act.

[1][22. **All lands to be liable to fair and equitable rent determined under this chapter.**- (1) Notwithstanding anything contained in any other law for the time being in force or in any entry made in the record of rights last prepared and finally published under chapter X of the Bengal Tenancy Act, 1885, all lands in any district or part of a district or local area in respect of which a record of rights is prepared or revised under this chapter shall be subject to the payment of fair and equitable rent determined in accordance with the provisions of this chapter and the rent so determined shall be entered in the record of rights so prepared or revised :

Provided that it shall not be necessary to determine under this chapter, the rent of any land, the rent of which has already been determined under section 5 and the rent so determined shall be deemed to be fair and equitable rent determined in accordance with the provision of this chapter.

(2) Where the fair and equitable rent determined or deemed to be determined for any land under the provisions of this chapter has not taken effect earlier under any other provision of this Act, it shall take effect from the first day of the Agricultural year next following the date of publication of the notification under sub-section (2) of section 43 declaring that a Compensation Assessment roll in respect of the area in which the land is situated has been finally published.]

1. Section 22 was subs. for the former section 22 by E.P. Ord. XLIV of 1958, s. 9.

Comments

In view of the express provisions of section 22 even the Government cannot by an order or agreement, exempt any land from assessment of rent, for the words used in the section are mandatory, namely, "all lands..... shall be subject to the payment of fair and equitale rents....." (40 DLR (AD)189).

23. **Determination of fair and equitable rents of khas lands.**- In preparing or revising a record of rights under this chapter, the Revenue officer shall determine the rent of every parcel of land in the khas possession of a proprietor or tenure holder, including a proprietor or tenure holder whose interests have been acquired under chapter II, within the area to which such record relates -

(i) if such land be agricultural land, 1[at a rate which the Revenue officer may deem fair and equitable having regard to the rates of rent generally] paid by occupancy raiyats for lands of a similar description and with similar advantages in the same village or in the neighbouring villages, and

(ii) if such land be non-agricultural land, at a rate which the Revenue officer may deem fair and equitable having regard to -

(a) the rent generally paid the Government or to any other landlord for non-agricultural lands with similar advantages or of a similar description in the vicinity,

(b) the market value of the land immediately before the publication of the notification under section 17, and

(c) the rent which would be payable if the rate were fixed at not more than one per centum of such market value,

whether or not such proprietor or tenure holder is entitled to retain possession of such parcel of land under section 20:

[2][Provided that in any estate, taluk or tenure, where a land revenue settlement was made within the last fifteen years, the rate of rent adopted as fair and equitable in such settlement may be taken to be the 3[fair and equitable rent within the meaning of this section.

Explanation - For the purposes of this section 'land' does not include any building or structure standing thereon.]

24. Determination of fair and equitable rents of raiyats and under raiyats.- (1) In preparing or revising a record of rights under this chapter, the Revenue officer shall, subject to the provisions of sub sections (2), (3) and (4), presume the rent, payable in respect of any land held by a raiyat or an under raiyat in the area to which such record relates at the time of preparation or revision of such record, to be fair and equitable.

(2) When the rent so payable in respect of any such land by a raiyat is in the opinion of, the Revenue officer unfair or inequitable, he may reduce such rent [4][to what is considered

1. The words within square brackets were subs. for the words "on the basis of the prevailing rate of rent" by E.P. Ord. XLIV of 1958, s. 10(1).

2. The proviso was subs. for the original proviso by E.B. Act XII of 1954, s. 6 which shall be deemed to have come into force on the first day of January, 1952.

3. The words within square brackets were subs. for the words "prevailing rate of" by E.P. Ord. XLIV of 1958, s. 10(2).

4. The words and comma "to what is considered by him as fair and equitable, but not below" were subs. for the words "on the basis of" by E.B. Act XII of 1954, s. 7, which shall be deemed to have come into force on the 1st day of January, 1952.

The words in etalics "having regard to the rates of rent generally" were subs. for the words "but not below the prevailing rate of rent" by E.P. Ord. XLIV of 1958, s. 11.

by him as fair and equitbale, *having regard to the rates of rent generally*] paid by the occupancy raiyats for lands of a similar description and with similar advantages in the same village or in the neighbouring villages.

[1][(3) Where the rent payable for any land by an under raiyat is, in the opinion of the Revenue officer, unfair or inequitable, he may reduce such rent to an amount not exceeding the fair and equitable rent payable by an occupancy raiyat for lands of a similar description and with similar advantages in the same village or in the neighbouring villages, increased by fifty per centum]

(4) If any raiyat or under raiyat pays in respect of any land referred to in sub-section (1), rent either in kind or on the estimated value of a portion of the crop or at rates varying with the crop or in more than one of these ways, the Revenue officer shall commute such rent to a fair and equitable money rent at an amount not exceeding one tenth of the total value of the annual gross produce of such land obtained by multiplying the normal annual, yield of that land, determined in the manner prescribed, by the average price of each kind of produce prevailing in the preceding twenty years, excluding the years in which such prices were abnormal [2][:]

[2][Provided that the Revenue officer shall, at the time of commuting such rent to a fair and equitable money rent allow for the superior landlord of such raiyat or under raiyat a margin or profit of not less than twenty five per centum and not more than fifty per centum of the rents payable by the superior landlord of such raiyat or under raiyat [3][when such superior land lord pays rents either in kind or on the estimated value of a portion of the crop or at rates varying with the crop or in more than one of these ways.]

25. Determination of fair and equitable rents of non-agricultural tenants.- In preparing or revising a record of rights under this chapter, the Revenue officer shall determine the fair and equitable rent of all non-agricultural lands held by non-agricultural tenants other than a tenure holder in accordance with the provisions of section 23 so far as they apply to non-agricultural lands :

Provided that when any such tenant holds any such land immediately under any person other than a proprietor or a tenure holder, the Revenue officer shall presume the existing table unless it exceeds by more than fifty per centum the fair and equitable rent payable in respect of such land by such person; and if it so exceeds, the Revenue officer shall fix the rent of such land so held by such tenant at a rate not exceeding the rate of the fair and equitable rent payable for such land by such person by more than fifty per centum.

[4][**25A. Enhancement and assessment of rent in certain cases.**- (1) When the rent of a taluk, tenure, holding or tenancy is less than the rent or revenue payable by the landlord of such taluk, tenure, holding or tenancy to his superior landlord or the Government, as the case may be, the rent of such taluk, tenure, holding or tenancy may be enhanced by the Revenue officer to an amount not less than the rent or revenue payable by such landlord in respect of such taluk, tenure, holding or tenancy :

1. Sub-section (3) was subs. for the original sub-section (3) by E.B. Act XII of 1954, s. 7 which shall be deemed to have come into force on the 1st day of January, 1952.

2. The colon was subs. for the full stop at the end of sub-section (4) of section 24 and thereafter the proviso was added, ibid.

3. The words within square brackets were added by E.P. Ord. III of 1956, s. 7.

4. Section 25A was inserted by E.P. Ord. XLIV of 1958, s. 12.

Provided that when any such taluk, tenure, holding or tenancy comprises a portion of the land of the parent estate, taluk, tenure, holding or tenancy, the Revenue officer shall, in determining the amount of enhancement of the rent under this section, take into consideration the rents payable to such landlord for any lands and the rental value of any lands in the khas possession of such landlord included in the remaining portion of the land of the parent estate, taluk, tenure, holding or tenancy.]

(2) Where any land held by a tenure holder, a raiyat, an under raiyat or a non-agricultural tenant is liable to be assessed to rent, but no rent has been assessed in respect thereof, the Revenue officer shall determine the rent payable by such tenure holder according to the principle of section 7 of the Bengal Tenancy Act, 1885, and by such raiyat or under raiyat or non-agricultural tenant according to the principle of section 26.

26. **Assessment of rent for rent-free land.**- (1) Where any land is held by a raiyat or an under raiyat free of rent the rent for such land shall be determined [1][at a rate which the Revenue officer may deem fair and equitable having regard to the rates of rent generally] paid by the occupancy raiyats for lands of a similar description and with similar advantages in the same village or in the neighbouring villages.

(2) Where any non-agricultural land is held by a tenant free of rent, the rent for such land shall be determined in accordance with the provisions of section 23 so far as they apply to non-agricultural lands.

27. Creation of separate holdings or tenancies in certain cases.- Where a rent receiver other than a proprietor or tenure holder holds only a portion of a holding or tenancy in his khas possession, such portion shall be constituted into a separate holding or tenancy and assessed to rent separately, and in making such assessment, the Revenue officer shall have regard to the rent of the original holding or tenancy, the proportionate area and value of the new holding or tenancy and the provisions of this chapter for the determination of fair and equitable rent of a holding or tenancy of that class.

[2]* * * *

28. **Assessment of rents of service tenancies.**- In preparing or revising a record of rights under this chapter, the Revenue officer shall fix, in respect of every land held within any area to which such record relates by a person who has been found on evidence produced before him to be entitled to hold such land free of rent in consideration of some service to be rendered, a rent [3][at a rate which the Revenue officer may deem fair and equitable having regard to the rates of rent generally] paid by occupancy raiyats for lands of a similar description and with similar advantages in the same village or in the neighbouring villages and shall record such person in the record of rights as a raiyat :

Provided that nothing in this section shall apply to any land held within the boundaries of a tea estate or any other industrial organisation.

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1. The words within square brackets were subs. for the words "on the basis of the prevailing rate of rent" by E.P. Ord. XLIV of 1958, s. 13.

4. The proviso was added by E.B. Act VI of 1952, s. 12 was omitted by E.B. Act XII of 1954, s. 8.

3. The words within square brackets were subs. for the words "determined on the basis of the prevailing rate of rent" by E.P. Ord. XLIV of 1958, s. 14.

29. **Effect of rents settled under this Chapter.**- (1) All rents determined under this chapter and entered in the record of rights finally published under section 19, shall subject to the provisions of section 53, be deemed to have been correctly determined and to be fair and equitable for the purposes of this Act.

(2) No suit shall be brought in any Civi Court in respect of the determination of any rent to the determination of which the provisions of this chapter apply or in respect of the omission to determine any such rent.

30. **Bar to jurisdiction of Civi Court.**- (1) After an order has been made under section 17 directing the preparation or revision of a record of rights in respect of any area, no Civi Court shall entertain any suit or application for the alteration of rent or determination of the status of any tenant or the incidents of any holding or tenancy in such area; and if any such suit or application relating to such area is pending before a Civi Court on the date of such order, it shall not be further proceeded with and shall abate.

Explanation.- Suit in this sub-section includes an appeal.

(2) No suit shall be brought in any Civi Court in respect of any order directing the preparation or revision of records of rights under this chapter or in respect of framing, publication, signing or attestation of such record or any part of it.

(3) No suit, appeal or proceeding in a Civi Court or High Court in respect of any land, nor any order passed in such suit, appeal or proceeding, shall operate as a bar in any way to the preparation or revision of record of rights or of Compensation Asessment rolls in accordance with the provisions of this Act.

31. **Preparation of compensation assessment roll on the basis of the existing record of rights.**- (1) The Government may instead of proceeding under section 17, by notification in the official Gazette, order that a compensation assessment roll be prepared under chapter V in respect of any particular district, part of a district or local area, on the basis of the record of rights last prepared and finally published under chapter X of the Bengal Tenancy Act, 1985 [[or chapter IX of the SylhetTenancy Act, 1936,] without any revision or after revising or recording only such particulars in such record as may be specified in such notification.

(2) When an order is made under sub section (1), the Revenue officer shall revise or record such particulars, if any, in accordance with such rules as may be made in this behalf by the Government and settle fair and equitable rents according to the principles laid down in sections 23, 24, [2][25,25A], 26,27 and 28, and shall then correct such record of rights so as to incorporate therein the particulars, if any, so revised or recorded and the fair and equitable rents so settled.

(3) A record of rights corrected under sub-section (2) shall be deemed to have been duly revised and finally published under this chapter.

[3][(4) When an order is made under sub section (1) in respect of any area, sections 105, 15A and 106 of the Bengal Tenancy Act, 1885, or sections 121, 122 and 123 of the Sylhet Tenancy Act, 1936, as the case may be, shall cease to apply to such area, and applications, suits or proceedings under those sections, pending on the date of such order, shall not be further proceeded with and shall abate.]

1. The words, figures and commas within square brackets were inserted by E.B. Act VI of 1952, s. 13.
2. The figures, comma and letter "25,25A" were subs. for the figures "25 by E.P. Ord. XLIV of 1958, s. 15.
3. Subsection (4) was added by E.B. Act VI of 1952, s. 13.

CHAPTER V

Assessment of compensation and acquisition of interests of rent receivers and of certain other interests.

32. **Interpretation.**- In this chapter, a rent receiver, proprietor or tenure holder includes a rent receiver, proprietor or tenure holder, as the case may be, whose interests have been acquired under Chapter II.

33. **Order for the preparation of acompensation assessment roll.**- As soon as may be after a record of rights in respect of any district, part of a district or local area has been prepared or revised and finally published under chapter IV, the Revenue officer shall prepare in the prescribed form and in the prescribed manner a compensation assessment roll in which the gross assets and the net income of all rent receivers within such district, part or area and the compensation to be paid in accordance with the provisions of this Act to all persons whose interests are acquired under this chapter or under chapter II, together with such other particulars as may be prescribed, shall be specified [1][:]

[1][Provided that it shall not be necessary to prepare, under this chapter, a compensation assessment roll in respect of any property acquired under chapter II, in respect of which a compensation assessment roll has been prepared under chapter VA.]

34. **Separate treatment of proprietors, tenure holders and other rent receivers in assessment and payment of compensation.**- In preparing such compensation assessment roll every proprietor, tenure holder or other rent receiver collecting rents in respect of any estate, tenure, holding or tenancy or part of any estate, tenure, holding or tenancy comprised within the area to which such roll relates shall, irrespective of whether he collects such rents separately or jointly with others, be treated separately for the purpose of assessment and payment of compensation under this chapter :

Provided that in the case of a Hindu undivided family governed by the Mitakshara law, all rent receivers included in such family shall be treated jointly for such purpose 2[:]

[2][Provided further that when more than one proprietor, tenure holder or other rent receiver jointly hold rent receiving interests and the total net income of such interests does not exceed five hundred Taka, such proprietors, tenure holders or other rent receivers may be treated jointly for the purpose of assessment of compensation under this chapter.]

35. **Calculation of gross assets and net income of rent receivers.**- (1) For the purpose of preparation of the compensation assessment roll under this Chapter -

(a) the gross assets of a rent receiver shall be taken to consist of the aggregate of the rents and cesses which were payable to such rent receiver by his immediately subordinate tenants -

(i) in the case of the interests acquired under chapter II for the agricultural year immediately preceding the notified date, and

(ii) in other cases, for the agricultural year immediately preceding that in which the record of rights is finally published under Chapter IV,

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1. The colon was subs. for the full stop at the end of section 33 and hereafter the proviso was added by E.B. Act VI of 1952, s. 14.

2. The colon was subs. for the full stop at the end of the existing proviso and thereafter the second proviso was inserted by E.B. Act XII of 1954, section 9, which shall be deemed to have come into force on the 1st day of January, 1952.

and where such rent receiver is the proprietor of an estate or the holder of a tenure, also of the aggregate of the fair and equitable rents determined under chapter IV for such of his khas lands as he retains possession of under section 20:

Provided that in the case of 1[a tenure holder or] a raiyat or an under raiyat or a non-agricultural tenant referred to in sections 24, 2[25,25A], 27 and 28, the rent fixed or determined for any land under the provisions of the said sections and entered in the record of rights finally published under chapter IV shall, for the purposes of this clause, be deemed to be the rent payable for such land for such year by such 3[tenure holder or] raiyat or under raiyat or non-agricultural tenant to his immediately superior landlord;

(b) the net income of a rent receiver shall be computed by deducting from his gross assets the following :-

(i) the sums which were or are calculated as payable by such rent receiver for such year as land revenue or rent and cesses to the Government or to his immediate landlord, as the case may be, in respect of the lands to which the gross assets relate;

(ii) the sum which was or is calculated as payable by such rent receiver in respect of such assets for such year as tax under the Bengal Agricultural Income Tax Act, 1944;

(iii) the sum which was or is calculated as payable by such rent receiver in respect of his income from non agricultural lands included in such assets for such year as tax under the Income Tax Act, 1922;

(iv) the average annual expenditure, if any, incurred by such rent receiver on account of maintenance of any irrigation or protective works in such lands; and

(v) collection charges not exceeding twenty per centum of the gross assets.

(2) In calculating the sums referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1) or determining the expenditure and charges referred to in sub-clauses (iv) and (v) of the said clause, the Revenue officer shall be guided by such rules as may be made in this behalf by the 4[Government].

36. Net income of a recusant proprietor.- Notwithstanding anything contained in section 35, in the case of a recusant proprietor of a temporarily settled private estate, the *malikana* payable to such proprietor in the agricultural year referred to in sub-clause (i) or sub-clause (ii) of clause (a) of sub-section (1) of section 35, as the case may be, shall be deemed to be the net income of such proprietor computed under section 35.

4[**36A. Net income of a recipient of Sair Compensation allowance.**- Notwithstanding anything contained in section 35, in the case of a recipient of sair compensation allowance, which was granted to holders of land as compensation on account of abolition of duties and taxes levied by them on land in the markets, the amount of sair compensation allowance payable annually to such recipient shall be deemed to be the net income of such recipient computed under section 35.]

37. **Rates of compensation for rent receiving interests.**- After the net income has been computed under sections 35 and 36 the amount of compensation to be payable in respect of the acquisition of the interests of rent receivers shall be determined as follows:-

1. The letter and words "a tenure holder or" were inserted by E.B. Ord. III of 1956, s. 8.
2. The figures, comma and letter "25, 25A" were subs. for the figures "25" by E.P. Ord. XLIV of 1958, s. 16.
3. The words "tenure holder or" were inserted by E.B. Ord. III of 1956, s. 8.
4. Section 36A was inserted after section 36 by E.P. Ord. I of 1971, s. 3.

(1) In the case where the rent receiver is a proprietor of an estate, a holder of a permanent tenure or tenancy or a raiyat or an under raiyat, the compensation payable in respect of the acquisition of the interests of such rent receiver shall be determined on the basis of his total net income from rent receiving interest in *the Province in accordance with the following table, namely :-

*Amount of the total net income in **the Province.*	*Rate of compensation payable.*
(a) Where the net income so computed does not exceed Rs. 500.	Ten times such net income.
(b) Where the net income so computed exceeds Rs. 500 but does not exceed *Rs. 2,000	Eight times such net income or the maximum amount under item (a) above increased by the excess of the net income over the maximum net income under item (a) above, whichever is greater.
(c) Where the net income exceeds Rs. 2,000 but does not exceed Rs. 5,000	Seven times such net income or the maximum amount under item (b) above increased by the excess of the net income over the maximum net income under item (b) above whichever is greater.
(d) Where the net income exceeds Rs. 5,000 but does not exceed Rs. 10,000	Six times such net income or the maximum amount under item (c) above increased by the excess of the net income over the maximum net income under item (c) above, whichever is greater.
(e) Where the net income exceeds Rs. 10,000 but does not exceed Rs. 25,000	Five times such net income or the maximum amount under item (d) above increased by the excess of the net income over the maximum net income under (d) above, whichever is greater.
(f) Where the net incoem exceeds Rs. 25,000 but does not exceed Rs. 50,000.	Four times such net income or the maximum amount under item (e) above increased by the excess of the net income over the maximum net income under (e) above, whichever is greater.
(g) Where the net income exceeds Rs. 50,000 but does not exceed Rs. 1,00,000	Three times such net income or the maximum amount under item (f) above increased by the excess of the net income over the maximum net income under (f) above, whichever is greater.
(h) Where the net income exceeds Rs. 1,00,000	Two times such net income or the maximum amount under item (g) above increased by the excess of the net income over the maximum net income under (g) above, whichever is greater.

* Sic-Read Bangladesh. ** Sic Read Taka.

(2) In the case where the rent receiver is the holder of a temporary tenure or of any other tenancy of a temporary duration, the compensation payable to such rent receiver in respect of the acquisition of the interest of such rent receiver shall be paid out of the compensation payable under this chapter to the immediately superior landlord of such rent receiver for the acquisition of the interest of such superior landlord; and the Revenue officer shall apportion the compensation between the holder of such temporary tenure or tenancy and his immediately superior landlord subject to rules made under this Act; and in making the apportionment the Revenue officer shall take into consideration the unexpired period of the temporary tenure or tenancy; and

(3) In the case where the net income or any portion of the net income in respect of any estate, tenure, holding or tenancy wholly or partly held under wakf, wakf-al-al-aulad, debutter or any other trust or legal obligation has been dedicated and applied exclusively to charitable or religious purposes without any reservation of pecuniary benefit for any individual, the compensation payable for the acquisition of the interests of any rent receiver in respect of the net income or the portion of the net income so dedicated and applied shall, instead of being assessed under clause (1) be assessed in the prescribed manner as a perpetual annuity equal to such net income or portion of the net income, as the case may be.

38. **Preparation of compensation assessment roll in respect of a rent receiver having interest in more than one area.**- If a rent receiver holds rent receiving interests in more than one area, the amount of compensation payable for the acquisition of such interests shall be calculated and the compensation assessment rolls in respect of such interests shall be prepared in accordance with such rules as may be made in this behalf by the Government.

39. **Rates of compensation for khas lands.**- (1) Compensation to be payable to a rent receiver, a cultivating raiyat, a cultivating under raiyat or a non agricultural tenant, in respect of the acquisition of lands in his khas possession which he is not entitled to retain under section 20, shall be determined in accordance with the following table :-

Class of lands.	*Rate of compensation payable*
(a) For lands used for agricultural or horticulural purposes including tanks.	Five times the net annual profit from such lands.
(b) For lands on which hats or bazars are held.	Five times the net annual profit from such hats or bazars.
(c) For lands which are cultivable or which are capable of cultivation on reclamation	Five times the net annual profit from such lands or ten times the annual raiyati, rent for an equal area of cultivated land in the neighbourhood which the Revenue officer may select as appropriate for the purpose, whichever is greater.
(i) Lands bearing any profit.	
(ii) Lands not bearing any profit.	Taka ten per acre profit.
[1][(d) For lands consisting fisheries or forests or lands used for a ferry.	Five times the net annual profit from such lands.
(d1) For lands which consist of jungles or water courses or marshy tracts not	Five times the net annual profit from such lands.]

1. Items (d) and (d1) were subs. for the former item (d) by E.P. Ord. XII of 1960, s. 7.

being fisheries and sandy chars or other uncultivable lands other than lands, such as roads, pathways, common burial or cremation ground, rivers, khas and water courses, which the public may use by natural or customary right or right of easement.	
(e) For vacant non-agricultural lands.	Five times the annual letting value of the lands to be determined in the prescribed manner.
(f) For lands with buildings	
(i) lands	Five times the annual letting value of the land to be determined in the prescribed manner.
(ii) buildings	The actual cost of construction less depreciation both to be determined in the prescribed manner.

[1][(1a) Notwithstanding anything contained in sub section (1), the compensation payable for the acquisition of any khas land held under wakf, wakf-al-al-aulad, debutter or any other trust on which any hat or bazar is held or which consists of any forest or fishery or which is used for a ferry and which is exclusively dedicated and the income from which is exclusively applied to religious or charitable purposes without reservation of pecuniary benefit for any individual, shall, instead of being determined in accordance with the table in that sub-section, be assessed as a perpetual annuity equal to such annual average of the income so applied as may be determined in the prescribed manner but not exceeding the net annual profit from such land as may be determined in accordance with the provisions of this section :

Provided that where, under any wakf, wakf-al-al-aulad, debutter or any other trust, the income from any such land is partly dedicated for religious or charitable purposes and partly reserved for the pecuniary benefit of any individual, only such portion of the land, as may be selected in accordance with the rules to be made in this behalf by the Government, shall come within the purview of this sub-section.]

(2) Any dispute regarding classification of lands for the purposes of [2][sub-sections (1) and (1a)] shall be referred to the prescribed Revenue Authority whose decision thereon shall be final.

(3) For the purpose of items (a) and (c) and of sub-section (1), the net annual profit from land shall be determined in the following manner :-

(a) the gross value of the annual produce of the land shall be calculated first by multiplying the normal annual produce of the land, determined in the prescribed manner, by the average price of each kind of produce during the 10 years immediately preceding the year in which the assessment roll is prepared ;

(b) the net annual profit shall be computed by deducting from the gross value of the annual produce of th land, the following :-

1. Sub-section (1a) was inserted, ibid.
2. The words, brackets, figures and letter within square brackets were subs. for the words, brackets and figure "sub-section (1)" by E.P. Ord. XII of 1960, s. 7.

(i) the sum determined in the prescribed manner as the cost of cultivation which shall not exceed fifty per centum of the gross value of the annual produce of the land;

(ii) the sum which is calculated as payable by the rent receiver on cultivating raiyat or cultivating under raiyat or non-agricultural tenant annually as land revenue or rent and cesses in respect to the land;

(iii) the sum which was or is calculated as payable by such rent receiver or cultivating raiyat or cultivating under raiyat in respect of the income from such lands as taxes under the Bengal Agricultural Income Tax Act, 1944; and

(iv) the sum which was or is calculated as payable by such a rent receiver or non-agricultural tenant in respect of the income from the lands as taxes under the Income Tax Act, 1922.

(4) For the purposes of items 1[(b), (d) and (d1)] of sub-section (1), the net annual profit shall mean the net annual profit as determined by the Revenue officer in accordance with the rules made in this behalf by the Government.

(5) Where the land, held by a cultivating raiyat or a cultivating under raiyat or a non-agricultural tenant, for which compensation is payable under sub-section (1), is subject to a mortgage, the compensation payable under the said sub-section to such cultivating raiyat or cultivating under raiyat or non agricultural tenant shall be apportioned between such raiyat or under raiyat or tenant and his mortgagee; and the Revenue officer shall apportion such compensation in accordance with rules made in this behalf under this act; and in making the apportionment the Revenue officer shall, in the case where the mortgage is an usufructuary mortgage, take into consideration the unexpired period of such mortgage.

40. **Preliminary publication of compensation assessment roll.**- (1) After the amount of compensation to be payable in respect of the acquisition of the interests of rent receivers and of the acquisition of the khas lands of rent receivers, cultivating raiyats, cultivating under raiyats and non agricultural tenants, which are to be acquired under this chapter or have been acquired under chapter II, has been determined in accordance with the provisions of sections 37, 38 and 39, the Revenue officer shall prepare the compenation assessment roll under section 33; and when such roll has been prepared, the Revenue officer shall cause a draft of it to be published in the prescribed manner and for the prescribed period which shall not be less than thirty days and shall receive and consider any objection which may be made to any entry therein or to any omission therefrom during the period of publication and shall dispose of such objections according to such rules as the Government may make in this behalf 3[:]

2[Provided that no objection shall be made under this section -

(i) by any person who does not claim any title to any compenation entered in the draft compensation assessment roll, or

(ii) to the amount of any rent entered in such roll which has been determined under section 5 or under chapter IV or under sub-section (2) or section 46A.]

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1. The word, brackets, letters, figure and comma "(b), (d) and (d1)" were substituted for the word, brackets and letters "(b) and (d)" by E.P. Ord. XII of 1960, s. 7.

2. The colon was subs. for the full stop at the end of sub-section (1) and thereafter the proviso was added by E.B. Act XII of 1954, s. 10, which shall be deemed to have come into force on the 1st day of January, 1952.

(2) Separate draft compensation assessment roll may be prepared and published under sub-section (1) for different villages or groups of villages in the district, part of a district or local area or for one or more perons having interests in different areas in respect of which a record of rights has been prepard or revised and finally published under chapter IV.

41. **Appeal to superior Revenue Authority.**- An appeal, if presented within two months from the date of the order appealed against, shall lie from every order passed by a Revenue officer under sub-section (1) of section 40 to the prescribed superior Revenue Authority; and such superior Revenue Authority shall consider and dispose of such appeals in accordance with rules made in this behalf by the Government.

42. **Final publication of the compensation roll.**- When all such objection and appeals have been disposed of, the Revenue officer shall make such alterations in the draft compensation assessment roll as may be necessary to give effect to any orders passed on objections made under sub-section (1) section 40 or on appeals preferred under section 41 and shall cause the said roll as so altered to be finally published in the prescribed manner; and the publication shall be conclusive evidence that the compenation assessment roll has been duly made under this chapter, and every entry in the compenation assessment roll so finally published shall, except as hereinafter provided, be final and conclusive evidence of the matter referred to in such entry and also of the nature of the interests of the rent receivers, the true area of the land and the apportionment of the compensation among the person claiming interest therein.

43. **Certificate and presumption as to final publication of compensation assessment roll.**- When a compensation assessment roll has been finally published under section 42, the Revenue officer shall, within such time as the Commissioner may, by general or special order require, make a certificate stating the fact of such final publication and the date thereof and shall date and subscribe the same with his name and official title.

(2) After the final publication under section 42 of the Compensation Assessment roll in respect of any village or group of villages or local area, the Government shall also by notification declare that a compensation assessment roll has been finally published for such village or group of villages or local area, as the case may be, specifying in such notification the date of such final publication; and such notification shall be conclusive proof of such publication and of the date thereof.

44. **Acquisition and vesting of the interest of proprietors, tenure holders and other rent receivers and of certain khas lands in the Government and the consequences thereof.**- Notwithstanding anything contained in any other law for the time being in force or in chapter II of thi Act or in any contract, but subject to the provisions of clauses (a), (b), (c) and (d) of sub-section (4) of section 3 [1][and sub-section (3) of section 46E], on the publication of a notification in the official Gazette under sub section (2) of section 43, declaring that a compensation assessment roll has been finally published, the following consequences shall ensue, namely :-

(1) all the interests of all the proprietors in their respective estates, of all the tenure holders in their respective tenures and of all other rent receivers in the holdings or tenancies respectively let out by such rent receivers within the area to which such roll relates or in such parts of such estates, tenures or holdings, or tenancies, as the case may

1. The words, figures, brackets and letter within square brackets were inserted by E.B. Ord. III of 1956, s. 9.

be, as are within such area including the interests of all such proprietors, tenure holders and other rent receivers in all lands comprised in such estates, tenures and holdings or tenancies or part of such estates, tenures and holdings or tenancies within such area which are in the khas possession of such proprietors, tenure holders and other rent receivers and the interests of all such rent receivers in all sub-soil including any rights to minerals in such estates, tenures and holdings or tenancies or part of such estates, tenures and holdings or tenancies within such area other than the interests which have already been acquired under chapter II or sub section (3) of section 46E shall, with effect from the first day of the agricultural year next following the date of publication of such notification in the official Gazette, be deemed to have been acquired by the Government free from all encumbrances but subject to the right of such proprietors, tenure holders and other rent receivers specified in clause (2);

(2) each proprietor, tenure holder and other rent receiver, whose interests in any estate, tenure or holding or tenancy or in any part of any estate, tenure or holding or tenancy, as the case may be, within the area to which such roll relates, are acquired under this Act, shall, with effect from the first day of the agricultural year next following the date of publication of such notification in the official Gazette, be entitled to retain possession of and hold, subject to the provisions of this Act, as a tenant directly under the Government all lands of which he is entitled to retain possession under chapter IV and, be liable to pay rent for such lands to the Government;

(3) the interests of all cultivating raiyats, cultivating under raiyats and non agricultural tenants in all lands held by such raiyats, under raiyats and non agricultural tenants within the area to which such roll relates in excess of the lands of which such raiyats, under raiyats or non agricultural tenants are entitled to retain possession under chapter IV, including the interests in the sub-soil of all lands so held in excess and all rights to minerals therein [1[other than the interests which have already been acquired under any other provision of this Act] shall, with effect from the first day of the agricultural year next following the date of publication of such notification on the official Gazette, be deemed to have been acquired by the Government and vest absolutely in the Government free from all encumbrances;

(4) all cultivating raiyats, cultivating under raiyats and other tenants holdings lands, within the area to which such roll relates, immediately before the first day of the agricultural year next following the date of such publication of such notification, shall, with effect from the first day of the said agricultural year, 2[if they have not already become tenants directly under the Government under any other provision of this Act,] become tenants directly under the Government and shall have the right to continue to hold, subject to the provisions of this Act, as tenants under the Government such of those lands as have not vested in the Government under item (3) 3[or under any other provision of this Act] and shall be liable to pay rent to the Government in respect of the lands so continued to be held;

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1. The words within square brackets were inserted by E.B. Ord. III of 1956,s.9.
2. The words and comma within square brackets were inserted, ibid.
3. The words within square brackets were inserted, ibid.

(5) all arrears of revenue and all cesses together with interest, if any, payable therein other than the arrears, cesses and interest referred to in clause (b) of sub-section (4) of section 3, remaining lawfully due on the first day of the agricultural year next following the date of such publication of such notification in respect of any estate within the area to which such roll relates shall, after the first day of the said agricultural year, continue to be recoverable from the outgoing proprietor by whom they were payable, and shall, without prejudice to any other mode of recovery, be recoverable by the deduction of the amount of such arrears and cesses and interest from the compensation money payable to such proprietor under this Act, when so ordered by the collector;

(6) all amounts, recoverable by the Government from a rent receiver under the Bengal Embankment Act, 1882 [1][or the East Bengal Embankment and Drainage Act, 1952] which remain outstanding on the first day of the agricultural year next following the date of such publication of such notification and are not already covered by clause (d) of sub-section (4) of section 3, whether on account of arrear dues or dues under future instalments under the Bengal Embankment Act, 1882 or the East Bengal embankment and Drainage Act, 1952, shall, without prejudice to any other mode of recovery, be recoverable by deduction of the amount of such arrear and future instalments from the compensation money payable to such rent receiver in respect of the interests of lands to which such outstanding amounts relate, when so ordered by the collector;

[2][(6a) all arrears of agricultural income-tax recoverable by the Government from a person under the Bengal Agricultural Income-tax Act, 1944, which remain outstanding on the first day of the agricultural year next following the date of such publication of such notification and are not already covered by clause (dd) of sub section (4) of section 3, shall, without prejudice to any other mode of recovery, be recoverable by the deduction of the amounts of such arrears from the compensation money payable to such person under section 58 in respect of the interests or lands to which such outstanding amounts relate, when so ordered by the collector;]

(7) all arrears of rent and all cesses, together with interests, if any, due thereon, in respect of any period previous to the first day of the agricultural year next following the date of such publication of such notification, which have accrued due in respect of any tenure, holding or land to which such roll relates, and which have not been barred by limitation or have not already vested in the Government under clause (c) of sub-section (4) of section 3, shall, on and from the first day of the said agricultural year, vest in and be recoverable by the Government and shall, without prejudice to any other mode of recovery, be recoverable from the person by whom they were payable by the deduction of the amount of such arrears, cesses and interest from the compensation money, if any, payable to such persons under section 58, when so ordered by the collector;

(8) with effect from the first day of the agricultural year next following the date of such publication of such notification, the ad interim payments under section 6, in respect of the rent receiving interests or lands for which compensation has been assessed in the Compensation Assessment roll to which such notification relates, shall cease; and the total amount of *ad interim* payments made under sub-section (1) or (2) [3][or (4a)] of the said

1. The words, comma and figures within square brackets were inserted by E.P. Ord. XXVIII of 1960, Frist Schedule.

2. Clause (6a) was inserted by E.P. Ord. XXXIX of 1959, s. 5.

3. The word brackets figure and letter "or (4a)" were inserted by E. P. Ord. XIV of 1961, s. 4.

section in respect of any such interests or lands, less an amount calculated at the rate of three per centum per annum on the amount of compensation assessed for such interests or lands in such roll from the date from which ad interim payments for such interests or lands became payable under 1* * * that section till the last day of the agricultural year in which such notification is so published, shall be deducted from the amount of such compensation.

Comments

After section 44 come into force rights of certain tenants under tenure holders disappeared and the tenants becomes raiyats directly under the Provincial Government.

Sub-section (3) of section 44 lays down that all the interests of all cultivating under raiyats with the exceptions mentioned in Chapter IV shall with effect from the first day of the agricultural year next following the day of publication of the notification relating to the compenstion assessment role be deemed to have been acquired by the Provincial Government and vest absolutely in the Provincial Government free from all encumbrances. According to the provisions of sub-section (4) of section 44 the raiyats mentioned in sub-section (3) become tenants directly under the Provincial Government and shall be liable to pay rent to the Provincial Government in respect of the lands they have right to continue to hold (20 DLR 158).

The hat, not being a retainable land of a tenant, does not vest in Government under section 44(3) (15 DLR 37).

The words 'in excess' mean whatever is non-retainable. Hats and bazars in view of the 1960 amendment are excluded from the retainable lands and are vested in the Government.

The High Court held the view that the words 'in excess' in sub-section (3) of section 44 necessarily refer only to retainable lands and can have no application at all to lands which are not retainable under section 20(2a).

Held : Whatever is non-retainable is in excess of that which is retainable. In view of the retrospective effect by Ordinance No. XII of 1960 in section 20 by the incorporation therein of sub-section (2a) which had the effect of excluding hats and bazars from the category of retainable lands from the very beginning the hats and bazars in the khas possession of rent receivers became vested in the Government from the date of the notification in 1956 under sub-section (2) of section 3 of the Act. But so far as raiyats, agricultural tenants and other tenants were concerned, the vesting took place, after the preparation of the compensation roll and its notification by virtue of sub-section 3 of section 44 (16 DLR (SC) 281).

No fresh notification for the acquisition of interests of tenants in hats and bazars was necessary, beccause, that was to follow as a consequence of the publication by operation of the provisions of the statute itself, and it is for this reason tha. in sub-section (3) of section 44 the language used is that they shall be deemed to vest absolutely in the Provincial Government, that is to say, that as a legal consequence of the notification of the final publication of the compensation assessment-roll they shall be treated as if acquired and vested in the Government (16 DLR (SC) 281).

45. **Proclamation by the Revenue officer.**- As soon as may be after the publication of a notification in the official Gazette under sub section (2) of section 43, the Revenue officer

1. The words, brackets and figures "sub-section (1) or (2)" omitted, ib'.

shall cause to be published, in the prescribed manner, in the area to which the compensation assessment roll in respect of which such notification is published relates, a proclamation in the local vernacular -

(a) explaining the consequences which as provided in section 44 have ensued on such publication of such notification, and

(b) directing all persons in such area, who will become tenants under the Government with effect from the first day of th agricultural year next following the date of such publication of such notification, to pay rent to the Government and not to anybody else.

46. **Printing and distribution of record of rights.**- (1) After the compensation assessment roll or compensation assessment rolls in respect of all estates, tenures, and interest of rent receivers in holdings or tenancies comprised within a district, part of a district or local area, in respect of which a record of rights has been prepared or revised and finally published under chapter IV, has or have been published, the entire chain of interests of rent receivers and showing therein only the tenant who will come directly under the Government as a result of the aequisition of such interest; and one or more numbers to be borne on the Revenue roll of the district shall be assigned by the collector in respect of the areas to which such record of rights relates in accordance with such rules as the Government may make in this behalf; and the record of rights so modified shall be reprinted.

(2) Copies of the record of rights so reprinted shall be distributed free of cost to the tenants of the areas to which such record of rights relates in such manner as may be prescribed.

[1][CHAPTER VA

Special provisions for preparation of compensation assessment rolls in respect of properties acquired under chapter II.

46A. **Preparation of compensation assessment roll in special cases.**- (1) The Government may, instead of proceeding under section 17 or section 31, by notification in the official gazette, order that a compensation assessment roll be prepared in respect of the properties of any rent receiver acquired under section 3 on the basis of the returns, papers and documents furnished or taken possession of under section 3A and 4.

(2) When an order is made under sub-section (1), the Revenue officer shall verify such returns, papers and documents in the prescribed manner and make such corrections therein as may be necessary, and settle fair and equitable rents of all tenants [2]**** immediately subordinate to such rent receiver according to the principles laid down in sections 24, [3][25,25A], 26 and 28.

(3) The Revenue officer shall, after taking action under sub-section (2) prepare in the prescribed form and in the prescribed manner a compensation assessment roll in which the gross assets and the net income of such rent receiver and the compensation to be paid to him in accordance with the provisions of this Act, together with such other particulars as may be prescribed, shall be specified.

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1. Chapter VA [containing sections 46A, 46B, 46C, 46D and 46E] was inserted by E.B. Act VI of 1952, s. 15.

2. The words "except tenure holders" were omitted by E.B. Ord. III of 1956, s. 10.

3. The figures, comma and letter within square brackets were subs. for the figures "25" by E.P. Ord. XLIV of 1958, s. 17.

46B. Bar to jurisdiction of Civil Court.- After an order has been made under section 46A, no Civil Court shall entertain any suit or application for the alteration or determination of rent of any land for which fair and equitable rent is required to be settled under sub-section (2) of that section; and if any such suit or application is pending before a Civil Court on the date of such order, it shall not be further proceeded with and shall abate.

46C. Application of the provisions of sections 34 to 43 in the preparation of Compensation Assessment roll under Chapter VA.- In the matter of preparation and publication of a compensation assessment roll under this Chapter,-

(a) the provisions of sections 34,38 and 40 to 43 shall apply so far as they are applicable;

(b) the provisions of sections 37 and 39 shall apply in whole; and

(c) the provisions of section 35 shall apply subject to the following amendment, namely :-

for clause (a) of sub-section (1) of section 35, the following clause shall be deemed to have been substituted, namely :-

"(a) the gross assets of a rent receiver shall be taken to consist of the aggregate of the rent and cesses which were payable to such rent receiver by his immediately subordinate tenants for the agricultural year immediately preceding the notified date, and where such rent receiver is the proprietor of an estate or the holder of a tenure, also of the aggregate of the fair and equitable rents determined under section 5 for such of his khas lands in that estate or tenure as he chooses to retain possession of under section 20:

Provided that in the case of [1][a tenure holder or] a raiyat or an under raiyat or a non-agricultural tenant, the rent determined for any land, under sub-section (2) of section 46A, according to the principles of sections 24, 2[25,25A] and 28, shall, for the purposes of this clause, be deemed to the rent payable for such land for such year by such raiyat, under raiyat or non agricultural tenant to his immediately superior landlord:".

46D. Net income of a recusant proprietor under Chapter VA.- Notwithstanding anything contained in clause (c) of section 46C, in the case of a recusant proprietor of a temporarily settled private estate, the mallkana payable to such proprietor in the agricultural year immediately preceding the notified date shall be deemed to be the net income of such proprietor computed under the said clause.

46E. Consequences of final publication of compensation assessment roll under Chapter VA.- Notwithstanding anything contained in chapter II, on the publication of a notification under sub-section (2) of section 43, declaring that a compensation assessment roll prepared under this chapter, has been finally published,-

(1) all tenants who became tenants directly under the Government under clause (e) of sub-section (4) of section 3 shall, with effect from the first day of the agricultural year next following the date of publication of such notification, pay to the Government rent for the lands held by them at the rates determined under this chapter;

(2) with effect from the first day of the agricultural year next following the date of such publication of such notification, the ad interim payments under section 6 or section 6A, in respect of the rent receiving interests or lands for which compensation has been

1. The words within square brackets were inserted by E. B. Ord. III of 1956, s. 11.

2. The figures, comma and letter within square brackets were substituted for the figures "25" by E.P. Ord. XLIV of 1958, s. 18.

assessed in the compensation assessment roll to which such notification relates, shall cease; and the total amount of ad interim payments made under sub-section (1) or (2) [1][or (4a)] of section 6 in respect of any such interests or lands, less an amount calculated at the rate of three per centum per annum on the amount of compensation assessed for such interests or lands in such roll from the date from which such ad interim payments for such interests or land became payable under 2**** section 6 till the last day of the agricultural year in which such notification is so published, shall be deducted from the amount of such compensation [3][:]

[3][(3) with effect from the first day of the Agricultural year next following the date of such publication of such notification, the interest of a rent receiver in all lands in his khas possession of which he is not entitled to retain possession under section 20 and for which compensation has been assessed in such compensation assessment roll shall, if not already acquired under sub section (2) of section 3, be deemed to have been acquired by the Government and vest absolutely in the Government free from all encumbrances.]

CHAPTER VI

Authorities for the preparation of Compensation Assessment roll.

47. Revenue and Judicial authorities.- There shall be the following authorities for the purposes of this part of this Act :-

(a) the Commissioner of State Purchase;

(b) the Director of Land Records and Surveys;

(c) Settlement Officers and Assistant Settlement Officers;

(d) Other Revenue Officers;

(e) Special Judges.

48. Appointments and powers.- (1) The Commissioner of State Purchase shall be appointed by the Government.

(2) The Commissioner of State Purchase shall, in respect of the whole of Bangladesh exercise the powers conferred and perform the duties imposed on him by this Act and by such rules as may be made under this Act. He shall also exercise general powers of superintendents and control over the Director of Land Records and Surveys and through him over all other officers subordinate to him.

(3) The Director of Land Records and Surveys shall exercise such powers and perform such duties of a Revenue Officer under this Act or any rules made thereunder as may be conferred or imposed on him.

(4) The Government may appoint one or more persons who has or have exercised the powers of a District Judge or a Subordinate Judge to be a Special Judge or Special Judges for the purposes of hearing appeals which may be preferred to him or them under the provisions of this Act and of inquiring into disputes as to the title to receive any compensation under a compensation assessment roll finally published under section 42 or as to the appointment of any compensation referred to him under section 60.

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1. The words, brackets, figure and letter "or (4a) were inserted by E.P. Ord. XIV of 1961, s. 5.

2. The words, brackets and figures "sub-section (1) or (2) were omitted, ibid.

3. The semi colon was subs. for the full stop at the end of clause (2) of section 46E and thereafter clause (3) was added by E.B. Act XII of 1954, s. 12.

CHAPTER VII

Revision of the Compensation Assessment-roll and the decision of disputes with regard to compensation.

[1][49. **Revision of compensation assessment roll.**- The Commissioner, or any officer not inferior in rank to that of a 2[Joint Deputy Commissioner] of a district empowered in this behalf by the Commissioner, or a Settlement Officer so empowered, may, on application, direct the revision of any compensation assessment roll or any portion of such roll and any record of rights or any portion of record of rights on the basis of which such roll has been prepared, at any time during the preparation of such roll and may direct such revision on an application made within three months from the date of final publication of such roll and may also, of his own motion, direct such revision at any time before payment of compensation, but so as not to affect any order passed by the superior Revenue Authority under section 41 or by the Special Judge under section 51 or under sub-section (4) of section 52 or under section 53 :

Provided that no such direction shall be issued unless not less than fifteen days' notice has been given to the parties concerned to appear and be heard in the matter.]

50. **Correction by Revenue officers of bonafide mistakes.**- A Revenue officer may, on application or of his own motion at any time before payment of compensation in accordance with a compensation assessment roll under section 58, correct any entry in the record of rights prepared or revised and finally published under chapter IV in respect of any area to which such compenation assessment roll relates, or any entry in such compensation assessment roll, if he is satisfied that such entry has been made owing to a bonafide mistake or correction such entry is necessary as a result of succession to or transfer of the interest of a rent receiver, cultivation raiyat, cultivating under raiyat or non agricultural tenant 3*****:

Provided that no such correction shall be made if an appeal affecting such entry has been presented under section 51 or section 53 or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

51. **Appeal to the Special Judge.**- (1) Any person, aggrieved by an order of the superior Revenue authority under section 41 or of the Commissioner or other officer under section 49 may present an appeal against such order within sixty days from the date of the final publication under section 42 of the Compensation Assessment roll to which such appeal relates or of the order appealed against, whichever is later, to the Special Judge appointed under sub section (4) of section 48.

(2) When a Revenue officer refers under section 60 to any Special Judge any dispute which has arisen as to the title of any person to receive any compensation payable under the compensation assessment roll or as to the apportionment of any such compensation or any part thereof, such Special Judge shall inquire into such dispute and decide the same; and such decision shall, subject to the provisions of section 52, be final.

52. **Statement of case by Special Judge to **the High Court.**- (1) Any party aggrieved by an order of the Special Judge may, within sixty days from the date of such order by

1. Section 49 and the proviso to it were subs. for the former section 49 by E.B. Ord. III of 1956, s. 12.
2. The words within square brackets were subs. for the word "Collector" by E.P. Ord. VIII of 1967, s. 4.
1. The words "whose name appears in such roll as a person entitled compensation" were omitted by E.P. Ord. XLIV of 1958, s. 19.

** For reference to "the High Court" be construed as reference to the High Court Division of the Supreme Court of Bangladesh" See P.O. No. 48 of 1972, Article 7.

application in the prescribed form accompanied, when the application is made by any party other than the Government, by a fee of fifty takas, require the Special Judge to refer to the High Court any question of law arising out of such order; and the Special Judge shall, within ninety days of the receipt of such application, draw up a statement of the case and refer it to the High Court :

Provided that, if in the exercise of the powers under sub-section (2) the Special Judge refuses to state a case which he has been required by any party other than the Government to state, such party may, within thirty days from the date on which he receives notice of the refusal to state the case, withdraw the application; and if he does so, the fee shall be refunded.

(2) If on any application being made under sub-section (1) the Special Judge refuses to state the case on the ground that no question of law arises, the party who made such application may, within sixty days from the date on which such party is served with notice of the refusal, apply to the High Court, and the High Court may, if it is not satisfied of the correctness of the decision of the Special Judge, require the Special Judge to state the case and to refer it; and on receipt of any such requisition the Special Judge shall state the case and refer it accordingly.

(3) If the High Court is not satisfied that the statement in a case referred under this section are sufficient to enable it to determine the question raised thereby, the High Court may refer the case back to the Special Judge to make such additions thereto or alterations therein as the High Court may direct in that behalf.

(4) The High Court upon the hearing of any such case shall decide the questions of law raised thereby and shall deliver its judgment thereon containing the grounds on which such decision is founded, and shall sent a copy of such judgment under the seal of the Court and the signature of the Registrar to the Special Judge who shall pass such orders as are necessary to dispose of the case conformably to such judgment.

(5) When a reference is made to the High Court, the cost shall be in the discretion of the Court.

53. **Appeal to the Special Judge.**- Any person aggrieved by an order of the Revenue authority under sub-section (2) of section 19 passed on appeal filed in respect of the determination of rent or recording of possession of any land, or by entry made in a record of rights under sub-section (2) of section 31 relating to the determination of rent or recording of possession of any land 1[or by an order settling fair and equitable rent of any land under sub-section (2) of section 46A], may present an appeal against such order or entry, within three months from the date of the final publication under section 42 of the compensation assessment roll to which such appeal relates, to the Special Judge appointed under sub-section (4) of section 48. The decision of the Special Judge on such an appeal shall, notwithstanding anything contained in section 52, be final.

54. **Correction of the Compensation Assessment roll.**- The Revenue officer shall make such alterations in the records of rights or the Compensation Assessment roll as may be necessary to give effect to any directions issued by the Commissioner or other officer under section 49 or an order made by a Special Judge under section 51 or section 53 or under sub-section (4) of section 52 or to any final order or decree of a Civil Court or High Court passed in any suit, appeal or proceeding declaring title to and, or possession of any land.

1. The words, brackets, figures and letter within square brackets were inserted by E.B. Act VI of 1952, s. 16.

55. **Application of the Civil Procedure Code to appeals before and inquiries by a Special Judge.**- The provisions of the Code of Civil Procedure, 1908, shall as far as may be, apply to all appeals presented to a Special Judge under sub-section (1) of section 51 or under section 53 and to all inquiries held by him under sub-section (2) of section 51.

56. **Bar to raising of certain issues.**- No party to a suit, appeal or proceeding in a Civil Court or High Court in respect of any land shall, notwithstanding anything elswhere contained in this Act, be entitled to raise before a Revenue officer, Revenue authority, Special Judge or the Commissioner or any other officer under section 19, 40, 41, 49, 51, 53 or 60 any issue in respect of such land, which is substantially in issue in such suit, appeal or proceeding.

CHAPTER VIII

Payment of Compensation

57. **Limits of and amount payable as compensation.**- (1) Notwithstanding anything contained elsewhere in this Act or in any compensation assessment roll as finally modified under section 54, no rent receiver shall be entitled to receive on account of compensation for the acquisition of his rent receiving interests any amount in excess of the amount calculated on his total net income from all his rent receiving interests in all estates, tenures, holdings and tenancies held by him within the Bangladesh at the rate applicable to such net income under section 37.

(2) When a rent receiver holds rent receiving interests in different areas, the Revenue officer shall, before making payment under section 58 of the compensation payable to him under a compensation assessment roll as finally modified under section 54 for the acquisition of his rent receiving interests in any such area, ascertain in the prescribed manner if any amount has been paid to such rent receiver on account of compensation for the acquisition of his rent receiving interests in any other area or areas in excess of the amount admissible under sub-section (1) and, if any such excess payment is found to have been made, deduct the amount of such excess from the amount of the compensation payable to him under such roll for the acquisition of such interests :

Provided that no such deduction shall be made until a reasonable notice has been given to the rent receiver to appear and be heard in the matter :

Provided further that an appeal, if presented within thirty days from date of the order making such deduction shall lie against such order to the prescribed superior Revenu authority whose order thereon shall be final.

(3) When any amount is deducted under sub-section (2) from the amount of any compensation payable to a rent receiver under a compensation assessment roll for the acquisition of his rent receiving interests, the balance, if any, remaining after such deduction shall, for the purpose of section 58, be deemed to be the compensation payable to such rent receiver in respect of such interests in the terms of the said roll.

58. **Manner of payment of compensation.**- (1) When the time within which appeals under section 51 or under section 53 may be made in respect of any entry in or omission from a compensation assessment roll has expired and, where any such appeal has been made under section 51, the time within which a reference may be made to the High Court under section 52 with regard to any order made by the Special Judge in relation to such appeal has also expired and all references made under section 52 in relation to all such

appeals have been disposed of and all orders under sub-section (4) of that section arising out of such references have been passed and, where any appeal has been made under section 53, such appeal has been disposed of, the Revenue officer shall proceed to made payment to the proprietors, tenure holders and other rent receivers, and to any groups of proprietors, tenure holders or other rent receivers and to the cultivating raiyats, cultivating under raiyats and other persons, who are shown in such compensation assessment roll as finally modified under section 54 to be entitled to compensation, of the compensation payable to them in the terms of the said roll after deducting from the amount of any compensation so payable any amount which has been ordered by the collector to be so deducted under [1][clause (b), (c), (d) or (dd)] of sub-section (4) of section 3 or [2][clause (5),(6),(6a) or (7)] of section 44 and also any amount to be deducted from such compensation under clause (8) of section 44 [3][or clause (2) of section 46E] [4][or section 76B] and any amount recoverable from such compensation under Chapter X :

Provided that if a rent receiver applied for scaling down his debts under chapter X of this Act, only half of the total amount of compensation payable to him under a compensation assessment roll, less any amount to be deducted under [1][clause (b), (c), (d) or (dd)] of sub-section (4) of section 3 or [2][clause (5), (6), (6a), (7) or (8)] of section 44 [3][or clause (2) of section 4E] [4][or section 76B], shall be paid to him and the payment of the other half shall be withheld until such application is disposed of and all debts recoverable from compensation money under that chapter are recovered in accordance with the provisions of sub-section (7) of section 71:

Provided further that no compensation payable to any person under a compensation assessment roll for any land with building shall be paid till the Government takes khas possession of such land and building.

(2) The amount of compnesation so payable shall be paid in cash or in bounds or partly in cash and partly in bounds. The bonds shall be non negotiable and payable in not more than forty annual instalments to the person named therein or his successor-in-interest and shall carry interest at three per centum per annum with effect from the date of issue.

(3) If any person, entitled to receive such compensation in respect of any estate, tenure or holding or part thereof or any land, had no power to alienate such estate, tenure, holding, part or land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Revenue officer shall keep the amount of compensation, or the bonds in which it is to be paid, in deposit with the collector of the district :

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1. The words, brackets, letters and commas within square brackets were subs. for the words, brackets, letters and comma "clause (b), (c) or (d)" by E.P. Ord. XXXIX of 1959, s. 6.
2. The words brackets, figures, letter and commas within square brackets were subs. for the words, brackets, figures and comma "clause (5),(6) or (7)", ibid.
3. The words, figures, brackets and letter within square brackets were inserted by E.B. Act VI of 1952, s. 17.
4. The words, figures and letter within square brackets were inserted by E.B. Ord. III of 1956, section 13.
5. The words, brackets, letters and commas "clause (b), (c), (d) or (dd)" were subs. for the words, brackets, letters and comma "clause (b), (c) or (d)" by E.P. Ord. XXXIX of 1959, s. 6.
6. The words, brackets, figures, letter and commas "clause (5), (6), (6a), (7) or (8)" were subs. for the words, brackets, figures and commas "clause (5), (6),(7) or (8)" by E.P. Ord. XXXIX of 1959, s. 6(b).
7. The words dfigures, brackets and letter within square brackets were inserted by E.B. Act VI of 1952, s. 17.
8. The words, figures and letter within square brackets were inserted by E.B. Ord. III of 1956, s. 13.

Provided that nothing herein contained shall effect the liability of any person who may receive the whole or any part of any compensation awarded under this Act to pay the same to the person lawfully entitled thereto.

(4) Notwithstanding anything contained in sub-section (2) and (3), an annuity referred to in clause (3) of section 37.

[1][or sub-section (1a) of section 39] shall be paid to the Commissioner of Wakfs in the case of a wakf or wakf-al-al-aulad and to a trust to be appointed in this behalf by the Government in any other case.

[2][(5) If any compensation is paid to a person in excess of the amount admissible to him under sub-section (1) or if a person receives any compensation to which he is not legally entitled, the collector may require such person to refund the amount within a period fixed. On the failure of such person to do so the amount shall be treated as a "public demand" and shall be recovered from such person as a public demand under Article 4(l) of Schedule I of the Bengal Public Demands Recovery Act, 1913:

Provided that nothing herein contained shall affect the criminal liability of the person concerned.]

59. **Money or bonds deposited in respect of estates, tenures, holdings or lands belonging to persons incompetent to alieate.**- (1) If the amount of any compensation paid in bonds or in cash is deposited with the collector of the district under sub section (3) of section 58 and it appears to the collector that the estate, tenure or holding or part thereof or any land in respect of which such amount has been awarded as compensation was held by any person who had no power to alienate the same, the collector shall, where the amount is deposited in cash, order such amount to be invested in the purchase of such Government or other approved securities as the collector thinks fit and shall direct the payment of the interest of such bonds or interest or other proceeds arising from such investment to the person or persons who would for the time being have entitled to the interest in such estate, tenure, holding or part thereof or other land, as the case may be, if such interest had not vested in the Government under section 3 or section 44, and such bonds or securities shall remain to deposited until -

(a) they are made over to any person or persons becoming absolutely entitled thereto; or

(b) they are mature.

(2) If, when such bonds or securities are mature, there is no person or persons absolutely entitled thereto, the collector shall direct the investment of the proceeds of such bonds or securities in the purchase of such Government or other approved securities as the collector thinks fit; and the provisions of sub section (1) shall apply to such investment and to the interest and other proceeds arising from such investment as they apply to the investment made under sub-section (1) of the amount of compensation deposited in cash with the collector under sub-section (3) of section 58 and the interest and other proceeds arising out of such investment.

(3) In all cases of moneys, bonds and other securities deposited to which this section applies, the collector of the district shall order the costs of the following matters

1. The words, figures, letter and brackets "or sub-section (1a) of section 39" were inserted by E.P. Ord. XII of 1960, s. 8.

2. Sub-section (5) was added by E.P. Ord. XXI of 1969, s. 3.

including therein all reasonable charges and expenses incidental thereto, to be paid by the Government, namely :-

(a) the cost of such investments as aforesaid;

(b) the cost of the orders for the payment of the interest or other proceeds of securities upon which such moneys are for the time being invested or of such bonds or other securities, and of all proceedings relating thereto except such as may be occasioned by litigation between adverse claimants.

(4) When any anuuity is paid as compensation under sub-section (4) of section 58 to the Commissioner of Wakfs, the Commissioner of Wakfs shall pay the same to the Mutawalli or other person or persons who would for the time being have been entitled to the possession of the wakf property in respect of which such compensation has been awarded; and when any amount is paid as compensation under the said sub section to a trustee appointed in this behalf by the Government such trustee shall pay the same to the sebait or other person or persons who would for the time being have been entitled to the possession of the trust property in respect of which such compensation has been awarded; and all costs for the payment of every such annuity under this sub-section shall be paid by the Government :

Provided that the Commissioner of Wakfs or otehr trustee may withhold the payment of the whole or any portion of such annuity until he is satisfied that amount of annuity paid in the preceding year under sub-section (4) of this section has been spent for the purpose for which such amount was paid.

60. **Dispute as to title or apportionment.**- If any dispute arises as to the title of any person to receive any compensation payable under a compensation assessment roll or as to the apportionment of any such compensation or any part thereof, the Revenue officer may refer such dispute to the Special Judge appointment under sub-section (4) of section 48 to enquire into such disputes for decision.

[1][60A. Certain sections not applicable to future acquisition.- The provisions of clause (c) of sub-section (4) of section 3, clause (7) of section 44 and sections 61 to 68 shall not apply in the case of acquisition of rent receiving interests on or after the date of coming into force of the East Bengal State Acquisition and Tenancy (Amendment) Ordinance, 1956].

CHAPTER IX

Provisions relating to arrears of revenue, rent and cesses

61. **Definition of arrears.**- For the purpose of clause (c) of sub-section (4) of section 3 or clause (7) of section 44, the expression arrear shall include the arrears in respect of which suits were pending on the date or day, as the case may be, referred to in the said clauses or in respect of which decrees, whether having the effect of a rent decree or money decree, were obtained before the said date or day and have not been satisfied and are not barred by limitation and shall also include the costs allowed by such decrees.

62. **Payment and realisation of arrears.**- (1) All arrears of rent and all cesses and interest, which have vested in the Government under clause (c) of sub-section (4) of section 3 or under clause (7) of section 44, shall be payable to the Government and not to anybody else; and no payment made in contravention of this sub-section shall be valid.

1. Section 60A was added by E.B. Ord. III of 1956, s. 14.

(2) Subject to the provisions of sections 63, 64 and 65, all such arrears of rent and cesses and interest and all arrears of revenue and all cesses and interest referred to in clause (b) of sub-section (4) of section 3 or in clause (5) of section 44 [1][may, without prejudice to any other mode of recovery,] be recoverable by the Revenue officer under the provisions of the Bengal Public Demands Recovery Act, 1913.

63. **Provision regarding pending suits and proceedings.**- If [2][any suit by a rent receiver or rent receivers] for the recovery of any arrears which have vested in the Government under clause (c) of sub-section (4) of section 3 or under clause (7) of section 44 or any proceeding in execution of a decree for the recovery of any such arrears is pending before any Civil Court on the date or day, as the case may be, referred to in the said clauses, such suit or proceeding, [3][where such rent receiver was the sold landlord or such rent receivers constituted the entire body of co-sharer landlords,] shall not be further proceeded with and shall be deemed to have been withdrawn and any such decree may be executed as if it were a certificate filed under the Bengal Public Demand Recovery Act, 1913.

[4][64. **Realisation of arrear in respect of lands held by tenant under Government.**- (1) A certificate or decree for the recovery of any arrears of rent to the recovery of which the provisions of this chapter apply shall not in the case where the certificate or judgement debtor is a tenant under the Government and where the arrears covered by such certificate or decree relate to any [5][holding or land] held by such tenant, be executed by arresting the certificate or judgment-debtor and detaining him in the Civil prison or by the attachment and sale of any movable or immovable property other than he [5][holding or land] to which such arrears relate.

[6][(2) If the holding or land to which such arrears relate has, before the execution of such certificate or decree, been sold in execution of any other decree or certificate, such arrears shall, notwithstanding anything contained in any other law for the time being in force, be a charge on such holding or land.]

65. **Sale of lands held by tenants under Government for arrears.**- Where any certificate or decree is executed under this chapter by the attachment and sale of any land which is held bby the certificate or judgment debtor as a tenant under the Government such sale shall, [7][in areas where Part V applies,] be subject to the provisions of section 90.

66. **Power to grant instalments and stay execution.**- It shall be competent for the certificate officer in executing any certificate or decree under this chapter to order the payment of the amount of such certificate or decree to be made by the certificate or judgment debtor by instalments within a period not exceeding three years from the date of such order and to stay the execution of the certificate or decree for such period :

Provided that in default of payment of any instalment, the certificate or decree may be executed for the whole of the outstanding balance thereof.

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1. The words and commas within square brackets were subs. for the word "shall" by E.B. Act VI of 1952, s. 18.
2. The words within square brackets were subs. for the words "any suit or proceeding", ibid, s. 19.
3. The words and comma within square brackets were inserted, ibid.
4. The original section 64 was numbered as sub-section (1) of that section by E.B. Act VI of 1952, s. 20.
5. The words within square brackets were subs. for the word "land" by E.B. Act VI of 1952, s. 20.
6. Sub-section (2) was added, ibid.
7. The words, figure and comma within square brackets were inserted, ibid, s. 21.

67. Payment to outgoing rent receivers.- [1][(1) The Government shall pay to an outgoing rent receiver to whom any arrears of rent and cesses and interest which have vested in the Government under clause (c) of sub-section (2) of section 3 or under clause (7) of section 44 were due immediately before the date or day, as the case may be, referred to in the said clauses a sum equivalent to fifty per centum of 2[such arrears excluding interest], as computed in the manner prescribed, by way of compensation within a period not exceeding four years from the said date or day in such manner and in such instalments as may be prescribed :

Provided that before making such payment, the Government may, after giving the outgoing rent receiver an opoortunity of being heard, deduct from such sum any debts and dues payable to Government by such rent receiver.

[1][(2) Instead of proceeding under sub-section (1), the Government may pay, at such time and in such manner as may be prescribed to an outgoing rent receiver, in lieu of the compensation payable under the sub-section, a sum equivalent to seventy per centum of the total amount actually collected by the Government out of such arrears and the provision of the proviso to sub-section (1) shall apply also to such payment.

(3) The amount payable under sub-section (2) shall be deposited by the collector in the prescribed manner with the Munsif having jurisdiction and the Munsif shall thereupon publish the particulars of the person to whom the amount is stated by the collector to be due and invite claims from the co-sharers and superior landlords of such person, if any, against such amount and shall then make an award and disburse the amount amongst the persons who are found by him to have a valid claim].

68. Computation of the period of limitation.- Notwithstanding anything contained in any other law for the time being in force, in computing the period of limitation for the recovery under this chapter of any arrears which have vested in the Government under clause (c) of sub-section (4) of section 3 or under clause (7) of section 44, a period of [3][ten years] on and from the date or day, as the case may be, on which such arrears have so vested under the said clauses and, where a suit or proceeding referred to in section 63 field for the recovery of any such arrears was pending before any Civil Court also the period for which such suit or proceeding was so pending, shall be excluded.

[4]CHAPTER IXA

Special provisions relating to arrears of rent

68A. Application of this chapter.- The provisions of this chapter shall apply in the cases of acquisition of rent receiving interest on or after the date of coming into force of the East Bengal State Acquisition and Tenancy (Amendment) Ordinance, 1956.

68B. Transitory provisions in respect of pending cases before the certificate officer.- (1) All requisitions for recovery of arrears of rent and applications for execution of decrees for arrears of rent made by a rent receivr under the provisions of chapter IXA for which

1. Section 57 was re-numbered as sub-section (1) of that section and thereafter new sub-section (2) and (3) were inserted by E.P. Ord. XIV of 1961.

2.The words within square brackets were subs for the words "such arrears and interest" by E.B. Act VI of 1952, s. 22.

3. The words "ten years" were subs. for the words "twenty four months" by E.P.-Ord. XVII of 1960 and also by E.P. Ord. XIV of 1961.

4. Chapter IXA (containing section 68A, 68B, 68C, 68D and 68E) was subs. for the former chapter IXA by E.P. Ord. XLIV of 1958, s. 20.

this chapter is being substituted and pending before any certificate officer on the date of coming into force of the East Bengal State Acquisition and Tenancy (Second Amendment) Ordinance, 1957, shall, on such coming into force, stand transferred to the Civil Court which has jurisdiction to entertain a suit for the recovery of the arrears of rent to which such requisition or application relates.

(2) On such transfer, the requisition or the application shall be deemed to be a plaint or application for execution of a decree, as the case may be, within the meaning of the Code of Civil Procedure, 1908, and the suit or application shall proceed in accordance with the provisions of law for the time being in force applicable for the recovery of such arrears or for the execution of such decree :

Provided that the Civil Court to which such requisition or application stands transferred shall, before proceeding with the suit or execution case, realise the difference between the Court fees already paid before the certificate officer on such requisition or application and the Court fees payable on such plaint or application in the Civil Court.

68C. **Arrears of rent and cesses due to a rent receiver and decrees for such arrears.**- All arrears of rent and dcesses together with interest thereon, which remained due to any rent receiver in respect of any interest on the date of acquisition of such interest under the provisions of this Act and which have not been barred by limitation, and all sums due to him in respect of any decree for such arrears whether having the effect of a rent decree or money decree and whether obained before or after the date of acquisition, the execution of which is not barred by limitation, shall continue to be recoverable by such rent receiver amicably or through Civil Court from the persons liable to pay them.

[1][68D. **Option to have arrears collected Government on certain condition.**- (1) Any such rent receiver may apply to the collector that he desires to have such arrears and interest, which are not barred by limitation to be recovered by the Government in consideration of half the amount actually collected being paid to the Government].

(2) The collector may refuse such application for reasons to be recorded in writing.

(3) If the collector grant the application, it shall be competent for the Government to recover such arrears and interest as if they were public demands or in any other manner as if the Government were the rent receiver.

(4) The collector shall, from time to time, in accordance with such rules as may be prescribed, sent to the rent receiver accounts of the amounts of arrears and interest aforementioned actually collected and shall pay to the rent receiver half of the amount so collected and retain the other half for the Government. Such accounts shall be treated as conclusive and shall not be questioned in any manner.

(5) The Government shall not be liable if it fails to recover the whole or any portion of such arrears and interest.]

68E. Computation of the period of limitation.- Notwithstanding anything contained in any other law for the time being in force, in computing the period of limitation for the recovery of any such arrears or for the execution of any decree in respect of such arrears, a period of 2[forty eight months] on and from the date of acquisition under this Act of the rent receiving interests to which such arrears relate shall be excluded.]

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1. Section 68D was subs. for the former section 68D by E.P. Ord. LX OF 1959, S. 2.

2. The words within square brackets were subs. for the words "twnety four months" by E.P. Ord. LII of 1959, s. 2, which shall be deemed to have taken effect on the 14th day of April, 1958.

CHAPTER - X

Provisions relating to indebted rent-receivers

69. Bar to execution of certain dectress and orders for the recovery of certain debts of rent-receivers.- (1) After the commencement of this Act, no Civil Court shall entertain any suit or execute any decree or order against any property of any rent-receiver, for the recovery of debt which is liable to be scaled down under section 70, until all the interests of such rent receiver which are liable to be acquired under this act have been so acquired and compensation in respect of the acquisition of all such interests have been paid or deposited under section 58 [1][:]

[1][Provided that if any rent receiver fails to apply for the scaling down of his debts within the period mentioned in sub-section (1) of section 70, the provision of this sub-section shall cease to apply to his debts on the expiry of the said period.]

(2) Notwithstanding anything contained in any other law for the time being in force, in calculating the period of limitation applicable to a suit or an application for the execution of a decree or order, the time during which the institution of such suit or the execution of such decree or order is barred under sub-section (1) shall be excluded.

(3) The amount of any debt recoverable under any decree or order the execution of which is barred under sub-section (1) shall be deemed to be reduced, if any such debt has been scaled down under section 70, by the amount by which such debt has been scaled down.

70. **Scaling down of debts and recovery thereof.**- (1) After the interests of a rent receiver in a district, part of a district or local area have been acquired under this Act, the debts incurred by such rent receiver before the 7th day of April, 1948, other than arrears of revenue, rent or ceasses and other than debts and dues payable to the government or to a co-operative society [2][and also other than loans advanced for financing tea industry], shall, notwithstanding anything contained in any other law for the time being in force, be scaled down in the following manner if the rent receiver has applied in the prescribed manner for scaling down his debts to the Revenue officer authorised under sub-section (1) of section 71 within 3 months of the publication under section 42 of the Compensation Assessment-roll in respect to his interests or lands which have been acquired first under section 3 or section 44 :-

(a) in the case of debt secured by a mortgage or charge on the interests of a rent receiver which have been acquired under the provisions of this Act, the debt shall be scaled down proportionately to the reduction in the net income suffered by such a rent receiver as a result of the acquisition of the interests concerned;

(b) in the case of a debt secured by a mortgage or charge partly on the interests of a rent receiver which have been acquired under this act and partly on other properties which have not been so acquired under this Act, the debt shall be divided into two parts in the same ratio as the net annual income of the rent receiver, as calcualted in the manner prescribed, from the interests mortgaged or charged which have been acquired bears to the net annual income from the properties mortgaged or charged which have not been so acquired; and the part of the debt proportionate to the net annual income from

1. The colon was subs. for the full stop at the end of sub-section (1) of section 69 and thereafter the proviso was added by E.B. Ord. III of 1956, section 16.

2. The words within square brackets were inserted by E.P. Act IV of 1956, section 2.

the interests which have been acquired shall be scaled down proportionately to the reduction of the net annual income suffered by the rent receiver as a result of the acquisition of the interests concerned;

(c) in the case of a debt not secured by any mortgage or charge on any interest or property, whether immovable or movable, of the rent receiver, the debt shall be divided into two parts in the same ratio as the net annual income of the rent receiver, calculated in the manner prescribed, from the interests, which have been acquired under this Act, bears to the net annual income of the rent receiver from the properties which have not been so acquired and from other sources; and the part of the debt proportionate to the net annual income from the interests which have been acquired shall be scaled down proportionately to the reduction in the net annual income suffered by the rent receiver as a result of the acquisition of the interests concerned :

Provided that no portion of the debt of any rent receiver shall be scaled down if the total of the debts apportioned under clauses (a), (b) and (c) on the interests or lands of the rent receiver acquired under this Act be less than one fourth of the total amount of the compensation money payable under this Act to such rent receiver :

Provided further that the debts liable to be scaled down under this section shall not be scaled down to an amount less than one fourth of the total amount of such compensation money.

[1][(1a) Notwithstanding anything contained in sub-section (1), a rent receiver, in respect of whose interest the Compensation Assessment-roll has been published under section 42 on or before the 15th day of March, 1955, may apply in the manner and to the officer laid down in that sub-section for scaling down his debts referred to therein within three months from the coming into force of the East Bengal State Acquisition and Tenancy (Amendment) Ordinance, 1956.]

[2][(1b) Notwithstanding anything contained in sub-section (1) or (1a), a rent receiver whose properties were under the management of the Court of Wards under the Court of Words Act, 1879 and in respect of whose interest the Compensation Assessment roll has been published under section 42 before the date of coming into force of the East Bengal State Acquisition and Tenancy (Amendment) Ordinance, 1959, may apply in the manner and to the officer as laid down in sub-section (1) for scaling down his debts referred to therein within 3 months from the said date.]

(2) If any rent receiver holds lands and other immovable properties, including those which will not be acquired under this Act, in different areas, then, notwithstanding anything contained in this section, action shall not be taken for the scaling down of the debts under this section until a compensation assessment roll or compensation assessment rolls in respect of all such areas has or have been prepared under [3][this Act] and finally modified under section 54.

(3) The extent of reduction in the net income of a rent receiver referred to in clauses (a), (b) and (c) of sub-section (1) shall be determined in accordance with the rules made in this behalf by the Government].

1. Sub-section (1a) was added by E.B. Ord. III of 1956, s. 17.
2. Sub-section (1b) was inserted by E.P. Ord. IV of 1959, s. 4.
3. The words "this Act" were subs. for the word and figure "Chapter V" by E.B. Act VI of 1952, s. 23.

(4) The net annual income referred to in clauses (b) and (c) of sub-section (1) from the properties which have not been acquired under this Act and the income from other sources shall be calculated in accordance with the rules made in this behalf by the Government.

(5) Notwithstanding anything contained in any other law for the time being in force or in any contract,-

(a) no creditor shall be entitled to recover in respect of any debt referred to in clause (a) of sub-section (1) any sum in excess of the debt as scaled down under that sub-section; and the liability of the rent-receiver for the balance of the debt shall be extinguished;

(b) no creditor shall be entitled to recover from the rent-receiver, in respect of the part of any debt which has been apportioned under clauses (b) and (c) of sub-section (1) to the interests of the rent receiver which have been acquired under this Act, any sum in excess of the amount to which such part of the debt has been scaled down under clauses (b) and (c) of sub-section (1); and the liability of the rent receiver for the balance of such part of the debt shall be extinguished :

Provided that the aggregate of all debts of a rent receiver so reduced under clauses (a), (b) and (c) of sub-section (1) shall be recoverable only from the compensation money payable for the acquisition of all his interests under this Act, and shall be limited to and shall not exceed half of the total compensation money so payable:

Provided further that no portion of the debt of a rent receiver apportioned under clause (b) or (c) of sub-section (1) on his properties which have not been acquired, and no portion of his debt secured entirely by a mortgage or charge on such properties, shall be recoverable from any compensation money payable to such rent receiver under this Act; and

(c) subject to the first proviso to clause (b), in the matter of recovery of debts from compensation money, the debts secured by the mortgage or charge on the interests of the rent receiver in any land or other immovable property shall have preference in the sequence in which such mortgage or charge was created over the debts not so secured; and any amount available after payment of the debts so secured shall be rateably distributed for payment of the debts not so secured.

[1][**Explanation.**- For the purpose of this section, the lands retained by a rent receiver under the provisions of section 20 shall be deemed as not acquired under the Act.]

71. Government to authorise Revenue-officer to take action under section 70.- (1) It shall be competent to the Government to authorise any Revenue officer to scale down the debts of rent receivers in any area under section 70 and to take other actions required or permitted by that section.

(2) A Revenue officer, authorised under sub-section (1), shall published in the prescribed manner a notice calling upon every creditor to submit to him within a prescribed period and in a prescribed form a statement showing all debts of the nature referred to in sub-section (1) of section 70 owed to him by the rent receivers in such area whose interests have been acquired under section 3 or section 44 and who have applied under sub-section (1) of section 70 for scaling down their debts and such other particulars as may be prescribed.

1. Explanation was added by E.P. Act IV of 1956, s. 2.

(3) A creditor who has failed to submit under sub-section (2), within the period referred to therein, the statement of any debt of the nature referred to in sub-section (1) of section 70, the liability of the debtor to pay such debt shall, notwithstanding anything contained in any other law for the time being in force, be deemed to be extinguished.

(4) After the expiry of the period referred to in sub-section (2), the Revenue Officer shall examine the statements of debts and other particualrs submitted under that sub-section and shall, after giving the creditors and the debtors an opportunity of being heard and making such enquiries as he deems fit, make necessary modification in such statements.

(5) After a statement of debts has been examined and necessary modifications made therein under sub-section (4), the Revenue officer shall proceed to scale down all debts shown in such statement as so modified in accordance with the provisions of section 70 and to take other actions in respect of such debts required or permitted by that section and in doing so and taking all other actions required or permitted by this chapter the Revenue officer shall follow such rules relating to procedure and other matters as may be made in this behalf by the Government.

(6) An appeal, if presented within a prescribed period, shall lie against an order passed by a Revenue officer under this section to a Special Judge appointedd under sub-section (4) of section 48; and the decision of the Special Judge and subject only to such decision and order of the Revenue Officer shall be final.

(7) A debt recoverable under this chapter from the total compensation money payable to the debtor under a Compensation Assessment roll or Compensation Assessment rolls shall be so recoverable in the manner prescribed.

CHAPTER XI

Miscellaneous

72. Bar to jurisdiction of Civil Courts in certain matters.- Save as expressly provided in this part, no suit shall be brought in any Civil Court in respect of the preparation, signing and publication of a compensation assessment roll or any part thereof under Chapter [1][V or Chapter VA] or in respect of any entry in or omission from such roll or in respect of any order passed under chapters V to X concerning any matter which is or has already been the subject of any appliciation made or proceedings taken under those chapters.

73. Power to enter upon land, to make survey, etc.- A Revenue officer, subject to any rules made under this Act, may at any time between the hours of sunrise and sunset enter upon any land with such officers or servants as he considers necessary, and make a survey or take measurements thereof or do any other Acts which he considers to be necessary for carrying out any of his duties under this Act.

74. Power to compel production of statements and documents.- (1) Subject to rules made under this Act, a Revenue officer may, for the purposes of this Act, by notice require any person to make and deliver to him a statement or to produce records or documents in his possession or control relating to any estate, tenure, holding or land at a time or palce specified in the notice.

(2) Every person required to make or deliver a statement or to produce any record or document under this section shall be deemed legally bound to do so within the meaning of sections 175 and 176 of the *Penal Code.

1. The words figure and letter within square brackets were inserted by E. B. Act VI of 1952, s. 24.
* The Reference to "Pakistan" in a title shall be treated as omitted by P.O. 48 of 1972.

75. Power to enforce attendance of witnesses and production of documents.- For the purposes of any enquiry under this Act, a Revenue officer shall have power to summon and enforce the attendance of witnesses or of any person having an interest in any estate, tenure, holding or land and to compel the production of documents by the same means and so far as may be, in the same manner as is provided in the case of Civil Court under the Code of Civil Procedure, 1908.

[1][75A. **Prohibition of subletting.**- (1) On and from the date of publication of a notification under sub-section (3) of section 17 or under sub-section (1) of section 31, no person shall sublet any land in his khas possession in the area to which such notification relates.

(2) Any subletting made in contravention of sub-section (1) shall be null and void [2][and the land so sublet shall be forfeited] to the Government.

[3][(3) Any person may, at any time, apply to the Government for the acquisition of any of his khas lands under sub-section (2) of section 3 on payment of compensation at the rate prescribed for such land in section 39.]

Comments

Sub-letting connotes the creation of a subordinate tenancy or under raiyati, under which the sub-lessee would but for a specical contract be liable to pay rent for that land to a person other than the provincial Government. section 75A was intended to prevent this eventuality.

Sub-letting in this section should, therefore, be construed strictly and unless the transaction sought to be invalidated comes strictly within the ambit of sub-letting in this strict sense it should not be brought within the mischief of this section (16 DLR(SC) 667).

The intention of this section appears to be that since after the acquisition of the interest of rent receivers, rent receivers were themselves to retain certain classes of retainable khas land as tenants directly under the Government, they should not be allowed to create further sub-tenancies under them (16 DLR (SC) 667).

Section 75A, though it came into force on the 30 August, 1954, was made operative only from the date of the notification under section 17(3) or section 31(1) and as such, it had no restrospective operation and did not invalidate leases created before such date. The provisions of sections 9 to 9D would still continue to govern such cases.

All that happened after the publiccation of the notification under section 17(3) was that the authority prescribed under section 9 could no longer permit transfer by lease.

The view that even in the case of lease created after the 16th of December 1955, the provision of sections 9A to 9B should have been resorted to for effecting a forfeiture of the leased land cannot be accepted as sound. This would render the provisions of sub-section (2) of section 75A wholly nugatory (16 DLR (SC) 667).

Before the High Court question arose, whether the 'Kabuliyat' executed after coming into force of section 75A of the Act was hit by its provision and, on the other hand, whether the suit was barred by estoppel.

Held : The kabuliyat is null and void being hit by the provisions of section 75A of the Act. Section 75A being a statute there can be no estoppel against a statute under certain circumstances as in the present case where the 'kabuliyat' was shown to be tainted with legality (21 DLR 429).

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1. Section 75A was inserted by E.B. Act XII of 195, s. 13.
2. The words within square brackets were added by E.P. Act IV of 1956, s. 3.
3. Sub-section (3) was subs. for the former sub-section (3) by E.P. Act IV of 1956, s. 3.

Sub-lesse being prohibited land under sub-lease reverts back to the original owner (33 DLR 260).

Sub-letting of any land in khas possession being prohibited and void under section 75A, the lessee acquires no right by virtue of an sub-letting of any land in khas possession being prohibited and void under section 75A, the lessee acquires no right by virtue of an illegal transfer and therefore the lessor shall be treated to have continued to remain owner in possession of the land (36 DLR 163).

Sub-section (3) of section 75A relates to sub-letting of land by a landlord, who has purchased the land in a rent execution case, to another person at a rent which is higher than the rent payable for the land by outgoing tenant. In such a case the Government cannot acquire the land on the ground that sub-letting is prohibited under sub-sections (1) and (2) of section 75A.

But when the landlord of Kharija taluk put a sikmi taluk under the kharija taluk to auction sale for rent and purchases the same himself and thereafter annuls the darsikmi taluk under Shikmi Taluk and plaintiff who owned the shikmi taluk took lease of a portion of land held in darsikmi taluk to such a case provisions of sub-section (3) of section 75A not applicable and the Government may treat the same as land of the land lord and when the area is in excess of the retainable limit Government may take possession of that land (35 DLR 419).

[1][75B. **Fees for application for enquiry.**- An application for fresh enquiry during the preparation or revision of record of rights or preparation of compensation assessment rolls under this Act shall be accompanied by such fee as may be prescribed.]

76. **Settlement and use of land vested in the Government.**- (1) Except as otherwise expressly provided in this Act, any land which vests in the Government under any of the provisions of this Act shall be absolutely at the disposal of the Government; and the Government shall be competent to make settlement of such land in accordance with such rules as it may make in this behalf or to use or otherwise deal with such land in such manner as it thinks fit :

Provided that no land shall be settled with a person unless he is a person to whom transfer of land can be made under section 90 :

Provided further that in making settlement of any cultivable land preference shall be given to an applicant for settlement who holds a quantity of cultivable land which, added to the quantity of cultivable land, if any, held by the other members of his family, is less than three acres.

(2) No Civil Court shall entertain any application or suit concerning any matter relating to the settlement, by any officer of the Government, of any land under sub-section (1).

Explanation.- For the purposes of this section, the definition of "family" as given in the explanation under section 20 shall apply *mutatis mutandis*.

Comments

Fishery : Lease of - suit for declaration by the plaintiff respondent for declaring his leasehold title and right in the suit fisheries for enjoyment for another period of 3 years from 1379-81 B.S. in extension or substitution of the original lease for 1376-78 B.S. Defendant appellant Government of Bangladesh contested the suit asserting that there is

1. Section 75B was added by E.B. Ord. III of 1956, s. 18.

no rule or law for extension of any lease beyond the period of lease for any loss sustained by the leasee rules 202-206 of the Government Estates Manual, 1958 laid down the procedure for leasing out fisheries under section 76 of the State Acquisition and Tenancy Act, 1950 the Government has the sole right to lease the suit properties in any manner it likes. Section 108 of the Transfer of Property Act (IV of 1882) covers the present case defining the rights and liabilities of the lessor and the lessee. As the respondent could not fish for the period of lease for circumstances beyond his control he could repudiate the lease as void and sue the appellant Government for rent money or compensation (40 DLR 283).

Lands held by Government under the provisions of section 76 which the Government can settle at its discretion with any person even though no rules have been framed regarding the disposal of land by Government. No suit shall lie disputing any such settlement of land by the Government and the failure to enquire by the Government regarding preference to be given to an application will not render the settlement null and void (36 DLR (AD) 232).

In respect of fisheries which are governed by section 76 of the State Acquisition and Tenancy Act, in the absence of rules framed thereof the Government must follow some standards or guide lines, and must not Act arbitrarily (39 DLR (AD) 85).

Again, it may be argued that the lease of the fishery is not governed by any satutes, but is governed by terms of the contract. But the contract was entered into by the Government having some legislative backing. For, fishery is a non-retainable khas land under section 20 of the State Acquisition and Tenancy Act and vested absolutely in the Government, under section 76 of this Act it lies at the disposal of the Government who may either manage it as khas or make settlement thereof in accordance with rules to be made by them. In the absence of any such rules, the Government must follow certain fixed standards, principles or guide lines applicable to all persons seeking settlement and shall not Act arbitrarily or in diseriminatory manner (39 DLR 88).

[1][76A. **Creation of separate estate and apportionment of revenue.**- Notwithstanding anything contained in any other law for the time being in force or in any contract,-

(1) when the interests of a rent receiver or rent receivers in a share or part of any estate have been acquired by the Government under sub-section (1) of section 3 or clause (1) of section 44, nothing in the Bengal Land Revenue Sales Act, 1859 or in chapter V of the Assam Land and Revenue Regulation, 1886, shall apply to such estate shall be deemed to constitute a separate estate for the purpose of the aforesaid Act or Regulation, as the case may be: and

(2) the land revenue and cesses payable for the parent estate shall be apportioned, between the acquired share or part and the separate estate constituted under clause (1), according to the following principles, namely :-

(a) when an acquired share consists of a separate account or separate accounts, the land revenue and cesses of such separate estate shall be equivalent to the difference between the land revenue and cesses payble for the parent estate and the land revenue and cesses fixed for the acquired separate account or accounts;

(b) when an acquired share does not consist of a separate account, the land revenue and cesses of such separate estate shall bear the same proportion to the land

1. Section 76A was added by E.B. Act XII of 1954, s. 14.

revenue and cesses of the parent estate as the share comprised in the separate estate bears to the parent estate;

(c) when an accquired share consists of a sepecific portion of the land of an estate having no separate account or when a part of an estate is acquired, the land revenue and ceses of such separate estate shall bear the same proportion to the land revenue and desses of the parent estate as the area of the land comprised in the separate estate bears to the area of the entire land comprised in the parent estate [1][;]

[1][(3) when the interests in a portion of a tenure, holding or other tenancy have been acquired under this Act and such portion consists of a definite share, the rent of such tenure, holding or tenancy shall be apportioned between the aquired and unacquired portions according to such share, but when it does not consist of a definite share, the Revenue officer may apportion the rent of such tenure, holding or tenancy between the acquired and unacquired portions on the basis of the area or value as may appear to him fair and equitable].]

[2][76B. **Recovery of advance rent or bid money realised by outgoing rent receivers.**- When the Revenue officer is satisfied that a rent receiver, whose interests have been acquired under this Act, has realised any amount on account of the rent or bid money or cocnsideration money in respect of any such interests for any period subsequent to such acquisition he may recover such amount or any part thereof from such rent receiver as a public demand.]

77. **Protection of action taken under this Act.**- (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

(2) Save as otherwise expressly provided under this Act no suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused or for any injury suffered or likely to be suffered by virtue of any provisions of this Act or by anything in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

[3][77A. **Delegation of the powers of the Government.**- The Government may, by notification, direct that any power conferred or duty imposed by this Act upon the Government shall, in such circumstances and under such conditions, if any, as may be specified in the notification, be exercised or performed also by any officer or authority subordinate to it.]

78. **Power to make rules.**- (1) The Government may, after previous publication, make rules for carrying out the purposes of Parts II, III and IV of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-

(a) the forms of the notifications referred to in sub-section (3) of section 3 and the particulars which such notifications shall contain ;

(b) the manner of service of the notice and the form of the return referred to in sub-section (1) of section 4;

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1. The semi colon was subs. for the full stop at the end of clause (2) and thereafter clause (3) was added by E.B. Ord. III of 1956, s. 19.

2. Section 76B was added, ibid, s. 20.

3. Section 77A was inserted by E.P. Ord. XV of 1961, s. 5.

(c) the time and manner of receiving an ad interim payment referred to in sub-sections (1) and (2) of section 6;

(d) the determination of the amounts of deductions referred to in sub-section (4) of section 6;

(e) the manner of and the period for filling appeals referred to in section 7;

(f) the manner of recovery of fines referred to in section 8;

1• • • • •

(h) the form of the applications referred to in section 15, the particulars which such applications shall contain and the amounts of process fees which shall accompany such applications;

(i) the manner of preparing or revising a record of rights under section 17 and the procedure to be followed and the powers to be exercised by Revenue officers in preparing or revising such record of rights;

(j) the particulars to be recorded in the record of rights to be prepared or revised under section 17;

(k) the manner and period of publication of the draft record of rights under sub-section (1) of section 19;

(l) the Revenue Authority to whom, the manner in which and the period within which an appeal under sub-section (2) of section 19 may be preferred;

(m) the disposal of objections and appeals under section 19;

(n) the manner of publication of the record of rights under sub-section (3) of section 19;

(o) the period for exercise of choice under sub-section (3) of section 20 and the manner of allotment of lands under the said sub-section when no choice is exercised;

(p) the manner of selection of lands under clause (ii) of sub-section (5) of section 20 which shall come within the purview of sub-clause (c) of clause (i) of the said sub-section;

(q) the manner of and the procedure for revising the particulars referred to in sub-section (2) of section 31 and the powers to be exercised by Revenue officer for the purpose;

(r) the form of a Compensation Assessment roll under section 33, the manner of preparing it and the particulars to be specified therein;

(s) the manner of calculation of the sums and determination of the expenditure and charges referred to in sub-section (2) of section 35;

(t) the procedure to be followed in the apportionment of the compensation between the holder of a temporary tenure or tenancy and his immediately superior landlord under clause (2) of section 37;

(u) the manner of and the procedure for the calculation of compensation and preparation of compensation assessment rolls in cases referred to in section 38;

1. Clause (g) was omitted by E.P. Act VI of 1964, s. 4.

(v) the manner of determinations of the annual letting value of lands referred to in items (e) and (f) and the manner of determination of the actual cost of construction and the amount on account of depreciation referred to in item (f) of the table in sub-section (1) of section 39;

(w) the manner of determination of the normal annual produce of land under clause (a) of sub-section (3) of section 39;

(x) the manner of determination of the cost of cultivation referred to in sub-clause (i) of clause (b) of sub-section (3) of section 39;

(y) the manner of determination of net annual profit from fisheries referred to in sub-section (4) of section 39;

(z) the procedure to be followed in making the apportionment of compensation referred to in sub-section (5) of section 39;

(za) the manner and period of publication of a draft Compensation Assessment roll under sub-section (1) of section 40 and disposal of objections under that sub-section;

(zb) the Revenue Authority to whom appeals under section 41 are to be preferred and disposal of appeals under that section.

(zc) the manner of publication of a Compensation Assessment roll under section 42;

(zd) the manner of publication of a proclamation under section 45;

(ze) the assignment under sub-section (1) of section 46 of numbers to be borne on the revenue roll of a district in respect of areas to which a record of rights referred to in that sub-section relates and the manner in which copies of record of rights shall be distributed under sub-section (2) of that section;

(zf) the powers and duties of the Commissioner of State Purchase referred to in sub-section (2) of section 48;

(zg) the powers and duties of the Director of Land Records and Surveys referred to in sub-section (3) of setion 48;

(zh) the form of application referred to in sub-section (1) of section 52 or in section 53;

(zi) the manner of ascertaining excess payment under sub-setion (2) of section 57 and the superior Revenue Authority referred to in the second proviso to that sub-section;

(zj) the manner of computing the sum referred to in section 67 and the manner and instalments for its payment to an outgoing rent receiver under the said section;

(zk) the manner of application under sub-seection (1) of section 70;

(zl) the manner of and the procedure for the determination of the extent of reduction in the net income referred to in sub-section (3) of section 70;

(zm) the manner of and the procedure for the calculation of the net annual inocme and the income referred to in sub-section (4) of section 70;

(zn) the manner of publication of a notice under sub-section (2) of section 71 and the form in which and the period within which a statement referred to in that sub-section is to be submitted and the particulars which such statement shall contain;

(zo) the rules referred to in sub-section (5) of section 71;
(zp) the period for presenting an appeal under sub-section (6) of section 71;
(zr) the procedure and conduct of the Revenue officers and of officers and servants referred to in section 73;
(zs) the exercise of powers under sub-section (1) of section 74 to enforce the making and delivery of statements and production of records or documents;
(zt) the rules for settlement of lands referred to in section 76.

PART V

CHAPTER XII

Application of this part and class of agricultural tenants.

[1][79. **Commencement of this Part.**- This Part or any portion thereof shall come into force in such areas[2], on such dates[2] and to such extent as the Government may, by notification[2], direct and when any portion of this part comes into fore in any area, the provisions of such portion shall have effect in suhc area notwithstanding anything ccontained in any other law for the time being in force.

1. Section 79 was substituted for the former section 79 by E.P. Ord. XV of 1961, s. 6.

2. Part V of the State Acquisition and Tenancy Act, 1950 came into force in the areas noted below with effect from the dates noted against each as per notification shown against each :-

May 13, 1958:

(1) Entire areas under the polic stations of Muladi Mehendiganj and Hijla of the Sadar Sub-division and in entire area of the Bhola sub-division of the district of Bakerganj, vide notification No. 5892-LR, dated 12th May, 1958, published in the Dhaka Gazette, Extraordinary, dated 13th May, 1958, Part 1A, p. 1293.

August 5, 1954 :

(2) Entire area of Patuakhali sub-division of the district of Bakerganj with effect from the date of publication of the notification in the Dhaka Gazette, vide Notification No. 9918-LR., dated 8th July, 1958, published in the Dhaka Gazette, dated 5th August, 1954, Part I, p. 890.

May 10, 1963:

(3) District of Comilla with effect from the date of publication of the notification, vide Notification No. SA-116/63/363, dated 9th May, 1963 published in the Dhaka Gazette, Extra., dated 10th May, 1963.

Agusut 1, 1963 :

(4) District of Jessore, Pabna, Chittagong, Noakhali, Dhaka, Sylhet, Rajshahi, Mymensingh, Rangpur and Bogra with effect from the date of publication of the notification vide Notification No. SA-116/63/609, dated 18th July, 1963, published in the Dhaka Gazette, dated 1st August, 1963 Part I, p. 1169.

August 29, 1963 :

(5) District of Khulna excluding the area to which part V as was applied under Notification No. 7717-LR, dated 9th May, 1955 published in the Dhaka Gazette, Extraordinary, dated 14th May, 1955 as amended by notification No. 16242-LR, dated 15th October, 1955 published in the Dhaka Gazette, Extraordinary, dated 27th October, 1955 vide Notification No. SA-116/63/701, dated 16th August, 1963 published in the Dhaka Gazette, dated 29th August, 1963, Part I, p. 1297.

August 29, 1963 :

(6) District of Dinajpur with effect from the date of publication of the Notifiation in the Official Gazette vide Notification No. SA-116/63/703, dated 16th August, 1963 published in the Dhaka Gazette, dated 29th August, 1963, Part I, p. 1297.

August5, 1965 :

(7) District of Faridpur with effet from the date of publication of the notification in the official gazette, vide Notification No. SA/116/63/437, dated 28th July, 1965 published in the Dhaka Gazette, dated 5th August, 1965, Part I, p. 1645.

[1][80. **Repeal.**- On and from the date of coming into force of [2][the whole of this part] in any area, the enactments specified in the schedule shall be repealed in that area to the extent mentioned in the fourth column of the schedule.]

81. Class of agricultural tenants and regulation of their rights and liabilities.- [3][(1) On and from the date of coming into force of the whole of this part in any area, there shall, within that area, be only one class of holders of agricultural land, namely, maliks; and the rights and liabilities of every succh land-holder shall be regulated by the provisions of this part :

Provided that nothing in this setion shall confer on any such malik any right to any interests in the sub-soil including rights to minerals in his holding :

Provided further that when the Government lease out any land for any particular period, the rights and liabilities of such a lessee shall be governed by succh terms and condition as may be set forth in the lease.]

[4]• • • •

[5][81A. **Rights and liabilities of non-agricultural tenants.**- (1) Except as otherwise provided in this Part, the rights and liabilities of a holder of non-agricultural land, who has becocme a tenant under the Government in respect of such land by virtue of the acquisition of the superior right in such land under the provisions of this Act, shall, where the provisions of the East Bengal Non-Agricultural Tenancy Act, 1949, applied to such land, at the time of such acqusition, be regulated by provisions of that Act.

(2) The rights and liabilities of othr non-agricultural tenants shall, except in the matter of determination, enhancement or reduction of rent, be governed by the terms of the lease and the provisions of the Transfer of Property Act, 1882 :

Provided that notwithstanding anything contained in this Act or in any other law for the time being in force or in any contract, no non agricultural tenant shall sublet the whole or any part of his tenancy on any terms and conditions whatsoever and, if any tenancy or any part of a tenancy is sublet in contravention of this provision, the interest of the non agricultural tenant in the tenancy or in that part of the tenancy, as the case may be, shall be extinguished, and the tenancy or the part of the tenancy shall vest in the Government from the date of such subletting free from all encumbrances.]

[6][81B. **Registration of lease deed.**- Notwithstanding anything contained in section 81 and 81A or any other law for the time being inforce, no agricultural tenancy shall in law be created or deemed to have been created, even after acceptance of salami and/or rent from the lessee, till a deed of lease has been executed in favour of the lessee by an authority competent to grant lease of Government khas land or any other Gazetted officer duly authorised in this behalf and the said lease has been duly registered under the provision of cclause (d) of sub-section (1) of section 17 of the Registration Act, 1908.]

1. Section 80 was subs. for the original seection 80 by E.B. Act VI of 1952, s. 26.
2. The words "the whole of this part" were subs. for the words "this part" by E.P. Ord. XV of 1961, s. 7.
3. Sub-section (1) was substituted for the original sub-section (1) of seection 81 by E.B. Act VI of 1952, s. 27.
4. Sub-seection (2) and (3) were omitted by E.P. Ord. VIII of 1967, s. 5.
5. Section 81A was inserted, ibid, s. 6.
6. Seection 81B was inserted by E.P. Ord. I of 1971, s. 4.

Comments

After the notification issued under section 3 of the Act, the status of the under raiyat became upgraded to that of raiyat (27 DLR (AD) 109).

The expression 'there shall be one class of holders of agricultural land', explained. Distinction within the class of raiyati holding would remain till publication of notification under section 3 of the Act all the lands would be held under the Government as raiyats and the distinction between classes of raiyats as distinguished from different classes of raiyati holdings the distinction of occupancy holding, non-occupancy till the publication of the notification under section 80 bringing into operation the whole of Part V of the Act and repealing Bengal Tenancy Act as a whole (19 DLR 714).

Existing classifications of tenants (as they stood under B.T. Act) shall continue to exist till part V of the Act came into force and thereafter all holders of agricultural land shall be known as maliks-till Part V came in to being rights and liabilities of the holders of agricultural lands are by the B.T. Act (35 DLR (AD) 230).

Section 81 provides that with effect from the date from which part V comes into force in any area all holders of agricultural land under the Government be known as miliks (35 DLR (AD) 230).

82. **In this Part,-**

(1) "bona fide cultivator" means a person who cultivates lands by himself or by members of his family or by, or with the aid of, servants or labourers or with the aid of partners or bargadars, and also includes an agricultural labourer;

(2) "raiyat" means a person who, by virtue of section 44 or otherwise, has acquired a right to hold land directly under the Government mainly for the purpose of cultivating it by himself or by members of his family or by, or with the aid of, servants of labourers or with the aid of partners or bargadars, and includes also the successors-in-interest of persons who have acquired such a right; [1]

(3) the family of a raiyat includes all persons living in the same mess with him and dependent upon him but does not include any servant or labourer [2];

[3] . . . . . .

(7) except when expressly provided otherwise, transfer includes a transfer by private sale, mortgage, gift or any contract or agreement; and

(8) on and from the date of coming into force of the whole of this part in any area, the word 'malik' shall be deemed to have been substituted for the word raiyat or 'tenant' and the word land revenue shall be deemed to have been substituted for the word rent wherever they occur in this part in relation to agricultural land, for the purpose of application of the provisions of this part to such area and where by the terms of any lease, kabuliyat, contract or other agreement, rent is payable to the Government, it shall be realisable as if it were land revenue.]

1. The word "and" at the end of clause (2) was omitted by E.P. Ord. XV of 1961, s. 9.

2. The semi colon was subs. for the full stop at the end of clause (3) and thereafter clauses (4), (5), (6), (7) and (8) were inserted, ibid.

3. Clause (4), (5) and (6) were omitted by E.P. Act XVII of 1964, s. 3.

Explanation.- Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation, notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

Comments

So far as the question of bonafide cultivation is concerned the learned Additional District Judge held that possession of the brother of the appellant in the disputed land could not be treated as his possession. P.W. 1 the appellant, stated that they got their land ploughed through their servants, the learned Assistant Attorney General in this respect submitted that although the appellant stated that they got their lands cultivated by their servants the said statement does not prove that the appellant got the disputed land cultivated by the servant. Section 82 of the State Acquisition and Tenancy Act and Rules 54 and 63 of Estates Manual provide that a bonafide cultivator must cultivate the land himself but he got the land cultivated by the hired labourers or servants. But in this case there was no evidence to show that the appellant got the disputed land cultivated by the servant. The learned assistant Attorney General, therefore, submitted that as such the appellant was not a bonafide cultivator and as he was a Government servant, he was not entitled to get settlement of khas mahal land. I find force in the contention of the learned Assistant Attorney General (40 DLR 21).

Section 82 read with Estate Mannual Rules 54 and 63. As the appellant was a Government servant and not a bonafide cultivator, e was not entitled to get khas mahal land (40 DLR 21).

CHAPTER XIII

Incidents of holdings of raiyats, and transfer, purchase and acquisition of land

83. Rights of raiyat in repect of use of land.- A raiyat shall have the right to occupy and use the land comprised in his holding in any manner he likes.

84. Devolution of holding on the death of a raiyat.- If a raiyat dies intestate his holding shall subject to, and in a manner not inconsistent with, the provisions of this Act, descend in the same manner as his other immovable property :

Provided that in any case in which under the law of inheritance, to which the raiyat is subject his otehr property goes to the State, his interest in the holding shall be extinguished.

85. Ground for eviction of raiyats.- A raiyat shall not be evicted from his holding or from any part of his holding, except in execution of a decree or ejectment from the whole holding or from any part of the holding, as the case may be passed by a Civil Court, on the ground that he has done any Act in contravention of the provisions of this Act with respect to the whole holding or the part concerned.

[1][86. **Abatement of rent on account of diluvion and extinguishment of rights, title and interest of the tenant thereto.**- (1) If the lands of a holding or a portion of such lands are lost by diluvion, the rent of the holding shall be abated by such amount as may be considered by the Revenue officer to be fair and equitable in accordance with the rules made in this behalf by the Government.

1. Section 86 was subs. for the former section 86 by P.O. No. 135 of 1972, Art. 2.

(2) Notwithstanding anything contained in any other law for the time being in force, the right, title and interest of the tenant or his successor-in-interest shall be extinguished in such lands or portion thereof, whether the loss of such lands or portion by diluvion took or takes place before or after the commencement of the State Acquisition and Tenancy (Fourth Amendment) Order, 1972.

(3) All lands, so lost by diluvion under sub-section (2), which re-appeared before the date of commencement of the said order, but in respect of which the right of the tenant, whose land was so lost, or his successor-in-interest, to re-possession was not finally recognised or declared by a competent authority or Court under any law for the time being in force and also all lands, so lost by diluvion under the said sub-section, which may re-appear on or after the said date, shall vest absolutely in the Government free from all encumbrances and shall be at its disposal.

[1][(4) Notwithstanding anything contained elsewhere in this Act, in making settlement of any land vested in Government under sub-section (3), preference shall be given to the person or his successor-in-interest who, immediately before loss by diluvion was owner of such land, subject to the condition that such land or portion thereof reappears within twenty years from the date of such loss :

Provided that the quantity of land to be so settled shall be such as, added to the quantity of land, if any, already held by such person or his family, does not exceed one hundred standard bighas or the total quantity of land held by such person or his family before loss by diluvion, whichever is less :

Provided further that the provision of this sub-section shall not apply to cases of re-appearance of land caused or accelerated by any artificial or mechanical process as a result of development works undertaken by Government or any authority empowered or authorised by or under any law to undertake such development works.]

(5) All suits, applications, appeals or other proceedings in respect of any claim to the re-possession of any land lost by diluvion which has re-appeared or is alleged to have re-appeared pending before any Court or authority on the date of commencement of the said order shall, not be further proceeded with and shall abate and no Court shall entertain any suit, application or other legal proceedings in respect of any such claim.

Explanation.- For the purpose of this section, the word 'family' shall have the same meaning as in clause (a) of section 151J, as amended by the State Acquisition and Tenancy (Fourth Amendment) Order, 1972.

Comments

Settlement of land granted by the Revenue Authority- cancellation of settlement by the Government whether lawful. Under section 146 of the tenancy Act the general power of superintendence and control over all revenue officers is vested in the Board of Land Administration and not the Government. The Board of Land Administration is not however empowered to revise under section 146 the orders passed by the Revenue officer under the Act, although the Board is the final authority to entertain appeal and revision against any order passed under the Act by a revenue officer including an order granting settlement of land. There is nothing to show that the Government is empowered under any provision of the state Acquisition and Tenancy Act to cancel or rescind any order passed by the Revenue Authorities (43 DLR 210=1990 BLD 286).

1. Sub-section (4) was subs. for the former sub-section (4) by Ord. LXI of 1975, s. 2

Accretion or reformation in situ. The provisions of law as to accreted land or reformed land as they stand now can have effect only with respect to land accreted or re-appeared after part V of the State Acquisition and Tenancy Act, 1950 came into force in the locality in question on August 29, 1963. The disputed land appeared above the river water as hard soil due to recession of the river in the later part of the forties or in the early part of the fifties and attached by the collector in 1955. In these circumstances the amended provisions of sections 86 and 87 can in no way be applicable in the present case (44 DLR 465).

Provisions of sub-sections (2) and (3) of section 86 of the Act cannot be given any retrospective effect beyond the date of coming into force of part V of the state Acquisition and Tenancy Act in the area in which the diluviated land is situated (31 DLR (AD) 195).

The suits, applications, appeals and other legal proceedings referred to in sub-section (5) of section 86 must necessarily involve claims which come within the mischief of sub-sections (2) and (3) of section 86 and relate to lands which are lost by diluvion after the commencement of the State Acquisition and Tenancy (Sixth amendment) Order as well as lands which were lost by diluvion before the commencement of the order but have re-appeared after coming into force of part V of the Act. (31 DLR (AD) 195).

Right, title and interest of a tenant in the diluvated land subsists during the period of diluvion not exceeding 20 years and he is entitled to immediate possession of the same on reappearance of such land within 20 years of diluvion of the lands irrespective of the question whether any abatement of rent has been taken for the lands or not. Under the provisions of the East Bengal State Acquisition Act, the tenant will be entitled to possession of the land, subject to the limitation regarding total area that can be possessed under section 20 or 90 of the State Acquisition Act. But if the land reappears beyond 20 years after diluvion then he cannot claim right to the land as a matter of course. It is, however, conceivable that a tenant may contrive to have subsisting interest in such land irrespective of the extent of the period the entire rents and the same has been accepted or realised (21 DLR 192).

Section 86 (1) (2) (3) as amended by State Acquisition and Tenancy (Fourth Amendment) Order, 1972 (President's Order No. 135 of 1972 dated 4.11.72 - second diluvion of the suit land took place in 1962-63 B.S. clauses (2) and (3) attracted because diluvion took place before the commencement of P.O. No. 135 of 1972 (41 DLR(AD) 141).

If the disputed lands reappeared in situ more than 12 years before filing of the application by the petitioners and they have been in possession of the same since such reappearance being recognized by the landlord, provisions of sub-section (3) of P.O. 135 of 1972 will not be applicable in respect of such lands (32 DLR 96).

The effect of making the provision of sub-section (1) of section 87 to any land gained by accession by the recess of a river or the sea before 28.6.72 as it purported to have been done under President's Order No. 137 of 1972 appears to do away with the right which had been acquired by the riparian owner under Bengal Regulation XI of 1825 and, if such accession took place after Part V of the State Acquisition and Tenancy Act had come into force, also under section 87 of the Act, as it stood before the enactment of the President's Order No. 72 of 1972 (31 DLR (AD) 195).

On June 28, 1972 the riparion owners right of accreton which was recognised by the usage and custom of the country, as referred to in the preamble of the Bengal Regulation XI of 1825 and which had enjoyed the sanction of positive legislation for about a century

and a half was abrogated by President's Order No. 72 of 1972 which substituted, in place of section 87 of the State Acquisition and Tenancy Act, a new section 87.

The provision of sub-section (1) of section 87 that the land gained by accession shall not be considered as an increment to the holding or tenancy makes it clear that the said provision is applicable only to the land added to the land of a raiyat or any other tenant and such a situation arose when all the rent receiving interests were acquired by the Government under sub-section (4) of section 3, which is to the effect that on and from the date specified in the notifications issued under section 3(1) all interests of rent receivers in their estates, taluks, tenants, holdings or tenancies vested absolutely in the Government and further on and from the dates specified in the notifications all such tenants in respect of their tenancies and rent receivers in respect of these khas lands become tenants directly under the Government and became liable to pay rent to the Government.

On 2nd April, 1956 several omnibus notifications under section 3 of the Act purporting to acquire the entire interests of the whole body rent receivers with effect from 14th April, 1956 were issued and since 14 April, 1956 all accreted lands, if any, adjoining those of the tenants or rent receivers became a part of their tenancies by virtue of the aforesaid provisions of the Act.

If any land had accreted to the lands of the tenants or the khas land of the rent receivers before the date specified in the said notifications, the said accreted land became a part of their tenancies or the khas lands, as the case may be, under the law then in force and they became tenants, by virtue of the provisions of the clauses (e) and (f) of sub-section (4) of section 3 of the Act, directly under the Government in respect of the said lands (31 DLR (AD) 195).

Having regard to the legal consequences flowing from the notifications issued under section 3 of the Act, non retrospective effect can be given to the provision of sub-section (2) of section 87 of the Act, in most of the cases, beyond 14.4.56, as the said provision read with that of sub-section (1) of section 3 does not purport to extinguish or nullify any right which has been created under the provision of this very statute, of which this newly enacted section 87 is a part.

The use of th word 'malik' in place of the word 'raiyat' or 'tenant' in sub-section (2) of section 87 unmistakably points out that the legislative authority was contemplating a situation in sub-section (1) and sub-section (2) of section 87, which could arise only after the coming into force of part V of the Act in the area in which the accreting lands are situated. The retrospectivity of the provisions of sub-section (2) of section 87 cannot therefore be pushed beyond the date of commencement of part V of the Act in the area where the accretion in question has taken place (31 DLR (AD) 195).

Because of the limited retrospectivity of the provision of sub-section (2), there may have been accretions to the lands of a tenant, after the publication of a notification under section 3 or section 43(2) of the Act before the commencement of Part V of the Act, which have not been affected by the retrospective operation given to sub-section (1) by sub-section (2) and only such accretions, as took place after part V of the Act had come into force in the area where the accreted lands are situated, have been brought under the purview of sub-sections (1) and (2) of section 87 of the Act (31 DLR (AD) 195).

Any suit etc. which have been broght the basis of tenant's right recorgnised under clauses (e) and (f) of section 3(4) in respect of any accreted land is outside the provision

of sub-section (3) of section 87 and therefore provision of sub-section (3) of section 87 are not attracted to such a suit etc. (31DLR (AD) 195).

As regards accretions which took place after the notification under sections 3 and 43 and before the coming into force of Part V of the Act provisions of section 87 not applicable (31 DLR (AD) 195).

Provisions of sub-section (2) and (3) of section 86 of the Act cannot be given any retrospective effect beyond the date of coming into force of Part V of the Act in the area in which the diluviated land is situated.

The suits, applications, appeals and other legal proceedings referred to in sub-section (5) of section 86 must necessarily involve claims which come within the mischief of sub-section (2) and (3) of section 86 and relate to lands which are lost by diluvion after the commencement of the order as well as lands which were lost by diluvion before the commencement of the order, but have re-appeared after coming into force of part V of the Act (31 DLR (AD) 195).

As the suit was filed in 1963 and the ordinance No. VIII of 1969 was not retrospective the accretion of the land to the holding due to development work would not deprive the plaintiff from the same. Plaintiff's suit is not also hit by abatement clause nor his right is disturbed by the operation of sub-section (2) because the provision is also not retrospective but prospective (1984 BLD (AD) 209).

[1][87. **Rights in land gained by accession from recess of river or sea.**- [2][(1) Notwithstanding anything contained in any other law for the time being in force, when any land has been gained by accession, whether from the recess of a river or of the sea, it shall not be considered as an increment to the holding or tenancy to which it may be thus annexed, but shall vest absolutely in the Government of the People's Republic of Bangladesh and shall be at their disposal.]

[2][(2) The provision of sub-section (1) shall apply to all lands so gained whether before or after the 28th June, 1972, but shall not apply to any land so gained before the said date if the right of a malik to hold such land as an increment to his holding was finally recognised or declared by a competent authority or Court before the date of commencement of the State Acquisition and Tenancy (Sixth Amendment) Order, 1972 (P.O. No. 137 of 1972) under the law then in force.

(3) All suits, applications, appeals or other proceedings for the assertion of any claim to hold, as an increment to any holding, any land gained or alleged to have been gained from the recess of a river or of the sea, pending before any Court or authority on the date of commencement of the said order shall not be further proceeded with and shall abate and no Court shall entertain any suit, application or other legal proceedings in respect of any such claim.]

Comments

As the suit was filed in 1963 and the ordinance No VIII of 1967 was not retrospective the accretion of the land to the holding due to development work would not deprive the plaintiff from the same. Plaintiff's suit is not also hit by abatement clause nor his right is disturbed by the operation of sub-section (2) of section 87 because the provision is also not retrospective but pospective (1984 BLD (AD) 209).

1. Section 87 was subs. for the former section 87 by P.O. No. 72 of 1972 Art. 2.
2. Section 87 was re-numbered as sub-section (1) of that section and thereafter sub-section (2) and (3) were added by P.O. No. 137 of 1972, Art.2.

[1][88. **Transferability of holding of raiyats.**- The holding of a raiyat or a share or portion thereof shall, subject to the provisions of this Act, be capable of being transferred by him in the same manners and to the same extent as his other immovable property [2][:]]

[2][Provided that the khas lands of a tea garden retained under sub-section (2) of section 20, or any portion thereof, shall not be transferred without the prior sanction in writing of the Deputy Commissioner and that the proposed transfer shall not in any way disrupt the entity of the tea garden as a whole or in any way affect the cultivation of tea for which the land is held.]

89. **Manner of transfer.**- (1) Every such transfer shall be made by registered instrument, except in the case of a bequest or a sale in execution of a decree or of a certificate signed under the Bengal Public Demands Recovery Act, 1913; and a Registering Officer shall not accept for registration any such instrument unles the sale price, or where there is no sale price, the value of the holding or portion or share thereof transferred is stated therein and unless it is accompanied by -

(a) a notice giving the particulars of the transfer in the prescribed form together with the process fee prescribed for the transmission thereof to the Revenue officer; and

(b) such notices and process fees as may be required by sub-section (4).

(2) In the case of a bequest of such a holding or portion or share thereof, no Court shall grant probate or letters of administration until the applicant files a notice similar to, and deposits a process fee of the same amount as, that referred to in clause (a) of sub-section (1).

(3) No Court or Revenue Authority shall confirm the sale of such a holding or portion or share thereof put to sale in execution of a decree or a certificate signed under the Bengal Public Demands Recovery Act, 1913 and no Court shall make a decree or order absolute for foreclosure of a mortgage of such a holding or portion or share thereof, until the purchaser or the mortgagee, as the case may be, files a notice or notices similar to, and deposits process fees of the same amount as, that referred to in sub-section (1).

(4) If the transfer of a portion or share of such a holding be one to which the provisions of section 96 apply, there shall be filed notices giving particulars of the transfer in the prescribed form together with process fees prescribed for the service thereof on all the co-sharer tenants of the said holding who are not parties to the transfer and for affixing a copy thereof in the office of the Registering Officer or the Court house or the office of the Revenue Authority, as the case may be.

(5) The Court, Revenue Authority or Registering officer, as the case may be, shall transmit the notice referred to in clause (a) of sub-section (1) to the Revenue officer and shall serve the notices on the co-sharer tenants referred to in sub-section (4) by registered post and shall cause a copy of the notice to be affixed in the Court house or in the office of the Revenue Authority or of the Registering Officer, as the case may be :

Provided that the service of such a notice shall not operate as an admission of the amount of rent or the area of such holding by the Government or by any co-sharer tenant of such holding on whom such notice is served or be deemed to constitute an express consent of the Government or such co sharer tenant to the division of the holding or to the distribution of the rent payable in respect thereof :

1. Section 88 was substituted for the former section 88 by E.P. Act XVII of 1964, section 4.
2. The colon was substituted for the full stop at the end of the section 88 and thereafter the proviso was added by P.O. No. 72 of 1972, Art. 3.

Provided further that if a transfer is subsequently set aside or modified by a competent authority in any suit, appeal or other proceedings to which the Revenue officer was not a party, the authority before whom the appropriate suit or proceedings was first initiated shall transmit a copy of such order to the Revenue officer.

(6) In this section -

(a) "transferee", "purchaser" and "mortgagee" include their successors-in-interests, and

(b) "transfer" does not include partition or, until a decree or order absolute for foreclosure is made, simple or usufructuary mortgage or mortgage by conditional sale.

90. **Limitation of transfer of holding.**- (1) Notwithstanding anything contained in any other law for the time being in force, no person shall, after the commencement of this part, be entitled to purchase or otherwise acquire, except in accordance with the provisions of this part, any quantity of land which added to the total quantity of land already held by him for himself and his family exceeds [1][three hundred and seventy-five standard bighas.]

(2) Notwithstanding anything contained in any other law for the time being in force, the holding of a raiyat or a share or portion thereof shall not be transferred whether by sale or gift or bequest or otherwise or by sale in execution of a decree or of a certificate signed under the Bengal Public Demands Recovery Act, 1913, except to a bona fide cultivator, and any other tenancy or a share or portion thereof shall not be transferred by any such means except to a person, who holds for the time being lands for himself and his family of a total area of less than three hundred and seventy-five standard bighas; and no such transfer shall be valid if, on such transfer, the area of the land so transferred added to the area of land held by the transferree at the time of such transfer exceeds three hundred and seventy five standard bighas] :

[2][Provided that nothing in sub-sections (1) and (2) shall render a transfer to any person or co-operative society invalid where the total area of the land held by succh person or co-operative society on such transfer exceeds three hudnred and seventy-five standard bighas, if -

(i) such person has been certified by the prescribed Revenue Authority to be a person who hs undertaken large scale farming by the use of power driven mechanical appliances, and

(ii) in the case of a co-operative society, the prescribed Revenue Authority has certified that such society has been formed by a group of cultivating land owners for better farming, irrespective of whether it uses power driven mechanical appliances or not, and that the ownership of the land has been transferred unconditionally to the society by the individual members.

and, in either case, such transfer is limited to the extent specified in the certificate granted by such Revenue Authority :]

Provided further that nothing in sub-section (1) or (2) shall apply to the transfer of lands to a person who is bona fide carrying on the cultivation of tea or to a co-operative society or company which is bonafide carrying on the cultivation of sugarcane for the

1. The words within square brackets were subs. for the words "one hundred standard bighas" by E.P. Ord. XV of 1961, s. 11.

2. The proviso was substituted for the first proviso by E.P. Act XVI of 1964, s. 5.

purpose of manufature of sugar by that society or company or to any other company the object of which is to develop industries by the manufacture of commodities.

(3) Notwithstanding anything contained in sub-section (1) or (2), a person who is not a bona fide cultivator, may, with the previous written permission of the prescribed Revenue Authority, purchase or otherwise acquire such quantity of land as may be specified in such permission, for occupation and use for commercial or industrial purposes or for charitable or religious purposes.

(4) Notwithstanding anything contained in sub-section (1) or (2), a person who is not a bona fide ccultivator, may, with the previous written permission of the prescribed Revenue Authority, purchase or otherwise acquire, such quantity of land as may be specified in the permission, for the purpose of constructing a dwelling house for himself and his family or for the purpose of cultivating such land by himself or by the members of his family or by, or with the aid of, servants or labourers or with the aid of partners or bargadars; and such person shall hold the land so acquired as a tenant under the Government] :

Provided that no such person shall be allowed to hold any area of land in excess of the limit imposed in sub-section (1) :

Provided further that, in case of land acquired by such person for the purpose of constructing a dwelling house for himself or his family, if no dwelling house is constructed on the land within five years from the date of such acquisition, the right of such person in such land shall be extinguished and the land shall vest in the Government.

(5) Any transfer of a holding or tenancy or of a share or portion thereof made in contravention of the provisions of this section shall be void, and the lands comprised in the holding or tenancy or share or portion thereof so transferred shall vest absolutely in the Government free from all encumbrances.

[**Note** : The total quantity of land which may be held by a family in Bangladesh under the proviso to clause (b) of sub-section (2) of section 20 of S.A.T. Act has been reduced to 100 standard bighas by the Bangladesh Land Holding (Limitation) Order (P.O. 98 of 1972).

Articles 3 and 4 of the order run as follows :

"3. Notwithstanding anything to the contrary in any other law for the time being inforce,-

(a) no family or body shall be entitled to retain any land held by it in excess of one hundred standard bigh as in the aggregate and all lands held by it in excess of that quantity shall be surrendered to the goverjment; and

(b) no family or body shall be entitled to acquire any land by purchase, inheritance, gift, heba or otherwise which, added to the land already held by it exceeds one hundred standard bighas in the aggregate.

Provided that the limitation imposed by clause (a) shall not apply to any land held under wakf, debuttor or any other religious or charitable trust, if the income from such land is exclusively dedicated to religious or charitable purposes without reservation of any pecuniary benefit for any in individual:

Provided further that if the income from any such land is partly dedicated to religious or charitable purposes and partly reserved for the pecuniary benefit of any individual only such portion of the land, to be selected in the prescribed manner, shall be exempted from such limitation, as would yield the income exclusively dedicated to religious or charitable purposes.

4. The government may relax the limitation imposed by Article 3, to such extent and subject to such conditions as it thinks fit, in the following cases, namely :-

(a) a co-operative society of farmers where the members thereof surrender their ownership in the lands unconditionally to the society and cultivate the lands themselves;

(b) land used for cultivation of tea, rubber or coffee or covered by orchards;

(c) an industrial concern holding land for the production of raw materials for manufacture of commodities in its own factories;

(d) any other case where such relaxation is considered necessary in the public interest."

Further, in the land Reforms Ordinance 1984 (Ordinance No. X of 1984), the total quantity of land which may be held by a family has been reduced to 60 (sixty) standard bighas. Section 4 of the Ordinance runs as follows :

"4. **Limitation on acquisition of agricultural land.**- (1) No malik who or whose family owns more than sixty standard bighas of agricultural land shall acquire any new agricultural land by transfer, inheritance, gift or any other means.

(2) A malik who or whose family owns less than sixty standard bighas of agricultural land may acquire new agricultural land by any means, but such new land, together with the agricultural land owned by him, shall not exceed sixty standard bighas.

(3) If any malik acquires any new agricultural land in contravention of the provisions of this section, the arrea of land which is in excess of sixty standard bighas shall vest in the government and no compensation shall be payable to him for the land so vested, except in the case where the excess land is acquired by inheritance, gift or will.

(4) Compensation for the excess land payable under sub-section (3) shall be assessed and paid in such manner as may be prescribed :

Provided that where such compensation is payable only for a portion of the excess land, the assessment and payment of compensation shall be made for such portion of the excess land as the malik may specify in this behalf."

So in view of the latest changes no malik or whose family owns more than sixty standard bighas of agricultural land shall acquire any new agricultural land by transfer, inheritance, gift or any other means].

91. **Power of acquiring excess land devolved by inheritance.**- Notwithstanding anything contained in any other law for the time being in force, when any area of land which has devolved on a person by inheritance added to the total area of land already in his possession exceeds the limit laid down in section 90, it shall be lawful for the Government to acquire an area of such land, equivalent to such excess, to be selected according to the choice of such person, on payment of compensation at the rates laid down in sub-section (1) of section 39.

92. **Extinguishment of interest of raiyats in certain cases.**- (1) The interest of a raiyat in a holding shall be extinguished -

(a) when he dies intestate leaving no heir entitled to inherit under the law of inheritance to which he is subject;

(b) when he surrenders his holding at the end of any agricultural year by giving notice in the prescribed form and in the prescribed manner and within the prescribed period to the Revenue officer;

(c) when he voluntarily abandons his residence without making any arrangement for payment of the rent as it falls due and ceases to cultivate his holding either by himself or by members of his family or by, or with the aid of, servants or labourers or with the aid of partners or bargadars for a period of three successive years; or

(d) when such interest has devolved by inheritance, under the law of inheritance to which such raiyat is subject, on a person who is not a bona fide cultivator and such person has not cultivated the land comprised in the holding either by himself or by members of his family or by, or with the aid of, servants or labourers or with the aid of partners or bargadars during the period of five years from the date on which such interest has so devolved on him and there is no sufficient cause why he has not so cultivated the land.

(2) When the interest of a raiyat in a holding is extinguished under sub-section (1), the Revenue officer may enter on the holding; and the holding shall, with effect from the date on which the Revenue officer so enters on it, vest absolutely in the Government free from all encumbrances except the encumbrances on the holding which is extinguished under clause (a) of the said sub-section, but the persons whose interests in the holdings are extinguished under clauses (b), (c) and (d) of that sub-section shall continue to be personally liable for the money secured by the encumbrances on such holdings.

(3) Before entering on a holding under sub-section (2), the Revenue officer shall cause a notice to be published in the prescribed manner declaring his intention to so enter on the holding and specifying the reasons thereof and also inviting objections from all persons interested in the holding and shall consider any objections that may be submitted to him within the period specified in that behalf in the notice and shall record a decision.

(4) Any person aggrieved by an order passed by the Revenue officer under sub-section (3) on any objection shown against the extinguishment of the interest of any raiyat in his holding under clause (d) of sub-section (1) may, instead of filing an appeal under section 147, institute a suit in the Civil Court against suhc order. Notwithstanding anything contained in any other law for the time being in force, suchc suit shall be filed within ninety days from the date of the order of the Revenue Officer under sub-section (3).

(5) All arears of rent in respect of a holding remaining due from a raiyat whose interest in such holding has been extinguished under sub-section (1) shall be deemed to be irrecoverabe.

93. **Restriction on subletting.**- (1) No raiyat shall sublet the whole or any part of his holding on any terms or conditions whatsoever.

(2) If any holding or any part of holding is sublet in contravention of the provisions of this secction, the interest of the raiyat in the holding or in that part of the holding shall be extinguished, and the holding or the part of the holding, as the ase may be, shall vest in the Government from the date of such subleting free from all encumbrances.

94. **Transfer of encumbrances in certain cases.**- Notwithstanding anything contained in any other law for the time being in force, the encumbranes referred to in sub-secction (5) of section 90 or sub-section (2) of section 93 shall, with effect from the date of transfer or sub-lease of the lands concerned, be deemed to be transferred and attached to such other lands of the transferor or the lessor as may be selected by the Revenue offier in accordance with the rules prescribed, and thereupon the encumbrancer shall continue to have the same rights in or against those lands as he had in the original lands before the transfer or sub-lease thereof. The transferor or the lessor, as the case may be, shall also be personally liable for the money secured by such encumbrances.

95. Limitation or mortgage of raiyats holdings.- (1) Notwithstanding anything contained in any other law for the time being in force, a raiyat shall not enter into any form of usufructuary mortgage other than a complete usufructuary mortgage in respect of his holding or of a portion or share thereof, and every such complete usufructuary mortgage shall be subject to the same limitations as are imposed by section 90 on a transfer of the holding of a raiyat or of any share or portion thereof; and the period for which such complete usufructuary mortgage may be entered into by any raiyat shall not exceed, by any agreement express or implied, [1][seven] years :

Provided that any such usufructuary mortgage may be redeemed at any time before the expiry of the said period, on payment of an amount which shall bear the same proportion to the total consideration money received by the mortgagor, as the unexpired period bears to the total period for which the mortgage had been entered into.

(2) Every such complete usufructuary mortgage shall be registered under the Registration Act, 1908.

(3) If any usufructuary mortgage entered into by a raiyat does not fulfil any of the conditions specified in sub-section (1) or is not registered as required under sub-section (2) it shall be void.

[2][3][(4) Notwithstanding anything contained in any other law for the time being in force, if any mortgagee prevents the redemption of a usufructuary mortgage under the proviso to sub-section (1) or refuses to restore any land covered by a usufructuary mortgage after the expiry of the period of such mortgage, the mortgagor may apply to the Sub-divisional Magistrate or to any officer authorised in this behalf by the Government] for such redemption or restoration and on suh application and, in the case of redemption, also on payment by the applicant of the amount due to the mortgagee under the said proviso, the Subdivisional Magistrate or the officer so authorised shall pass an order directing the mortgagee to restore possession of the mortgaged land to the applicant and to deliver up to the applicant all documents in his possession or power relating to the mortgaged land by such date as may be fixed in the order.]

[(5) If the mortgagee does not restore possession of the mortgaged land to the mortgagor by the date fixed under sub-section (4), the Subdivisional Magistrate [4][or any officer authorised in this behalf by the Government] shall, on application made by the mortgagor, put the applicant in possession of such land by evicting the mortgageee therefrom and may, for such eviction, use or cause to be used such fore as may be necessary.]

Comments

The amendment was made by President's Order No. 88 of 1972 and section 95A was inserted by the same President's Order. Section 95A provides that in any tranaction when the transferer receives from the transferee any consideration and transferee acquires the right to possess and enjoy the usufruct of such holding, etc. for a specified period in lieu of such consideration then such transfer shall be deemed to be a complete usufructuraty mortgage for not exceeding 7 years and the provisions of section 95 (4) and (5) will apply for restoration of possession (32 DLR (AD) 233, 1982 BLD (AD) 151).

1. The words "seven" was subs. for the word "fifteen" by E.P. Ord. XXI of 1969, s. 5.
2. Sub-section (4) and (5) were added by P.O. No. 88 of 1972, Art. 2.
3. Sub-secetion was substituted for the former sub-section (4) by P.O. No. 24 of 1973, art. 2.
4. The words within square brackets were inserted, ibid.

After expiry of 7 years (unless earlier redeemed on repayment) mortgagor will get back his property. Mortgagor's right to redeem subsists for 60 years (34 DLR (AD) 237).

Section 95 (after its amendment by P.O. No. 86 of 1972) gives the mortgagor the right to get his property by application to a Magistrate. Amendment by P.O. No. 86 of 1972 further says an out and out sale with a condition of recoveryance will still be treated a complete usufructuary mortgage (34 DLR (AD) 237).

Once a mortgage-Bar of past and closed transaction not applicable (34 DLR (AD) 237).

Circle officer (Revenue) while passing any order under section 95 (4) is not a Court subordinate to the High Court Division within the meaning of section 115 C.P.C. (39 DLR 306).

This right of repurchase may also be heritable and assignable. Such right operates within strict limits and must be strictly construed (26 DLR 395).

The present law regarding usufructuary mortgage was enacted to protect the helpless raiyat. The legislature in section 95 provided that the raiyat shall not enter into any form of usufructuary mortgage other than the complete usufructuary mortgage. The legislature also prohibited a contract of out and out sale with a clause of reconveyance and by a deeming clause and made such transaction as complete usufructuary mortgage. In other words, in Bangladesh a raiyat cannot enter into any other transaction of his raiyat holding except a complete usufructuary mortgage (32 DLR (AD) 233).

[1][95A. **Treatment of certain transaction as usufructuary mortgage.**- Notwithstanding anything contained in any other law for the time being in force, any transfer of a holding or of portion or share thereof, [2][either by way of an out and out sale with an agreement to reconvey,] [3][or] where the transferor receives from the transferee any consideration and the transferee acquires the right to possess, and to enjoy the usufruct of, such holding or portion or share thereof for a specified period in lieu of such consideration, shall notwithstanding anything contained in the document relating to the transfer, be deemed to be a complete usufructuary mortgage for a period not exceeding seven years and the provisions of section 95 shall apply to succh transfer whether made before or after the date of commencement of the State Acquisition and Tenancy (Second Amendment) Order, 1972 (P.O. No. 88 of 1972).]

Comments

Section 95A introduced by P.O. 24 of 1973 is discriminatory and as such unconstitutional.

Section 95A of the State Acquisition and Tenancy Act affects only one class of persons, viz, agricultural tenants; the law providing for extinction of interest of such tenants acquired on the basis of a tranaction of an out and out sale with agreement to reconvey, but without affecting other class of people must be considered discriminatory and voilative of the fundamental right guaranteed under Article 27 of the Constitution when there appears to be no rational basis of this classification.

The law regulating the right of an agricultural tenant to mortgage his land may not be considered to be discriminatory inasmuch as indebted agricultural tenants who constitute powerful section of the people may be regarded as a class apart for which there appears to

1. Section 95A was inserted by P.O. No. 88 of 1972, Art. 3.
2. The words and comma within square brackets were ins. by P.O. No. 136 of 1972, Art. 2.
3. The word "or" was ins. by P.O. No. 24 of 1973, Art. 3.

be a rational basis, having a just and reasonable relation to the object of the legislation. But the position of such a person with regard to the land which he has acquired on the basis of a deed of out and out sale with an agreement to reconvey has no unique distinction providing a reasonable basis for classification for the purpose of expropriation (26 DLR 394).

Insertion of the word 'or' in section 95A by P.O. 24 of 1973 when interpreted in ordinary way is violative of the fundamental right and as such unconstitutional (26 DLR 394).

Read with amendment introduced by P.O. 26 of 1973 it will appear that placing of the word 'or' in P.O. 24 of 1973 is not natural. Insertion of the words 'or otherwise' and not merely 'or' is more appropriate.

If the word 'transfer' in section 95A is to mean transfer by way of mortgage, then the agreement to reconvey must be inserted in the same deed as required by section 58 (c) of the Transfer of Property Act and in case there are two deeds each must be registered (26 DLR 394).

The legal effect is that an absolute owner of a property who is presumed to have paid the full value will be divested of all his rights in the said property after the lapse of seven years and shall be liable to be evicted summarily therefrom (26 DLR 394).

Introduced by P.O. 25 of 1973.

The provisions of section 95A may be summarised as follows :-

(a) a transaction of out and out sale with an agreement to reconvey within the meaning of section 95A must be in essence a mortgage.

(b) a deed of out and out sale with a separate deed of agreement to reconvey is not a transaction within the ambit of section 95A.

(c) Section 95A has no application to a tranaction which has been past and closed before the relevant Presidential Order was promulgated;

(d) Section 95A cannot be invoked in respect of a tranaction which had been entered into before part V of the State Acquisition and Tenancy Act came into operation in the area in wich the land in questionlies (26 DLR 395).

The right of repurchase may also be heritable and assignable. Such right operates within strict limits and must be strictly construed (26 DLR 395).

P.O. Nos. 88 and 136 and P.O. 24 of 1973 are valid laws. Transfer of a holding or part thereof by a raiyat by way of out and out sale with an agreement to reconvey shall be deemed a complete usufructuary mortgage for maximum 7 years. So also when a transferor received consideration from the transferee, who on the basis thereof possesses and enjoys the usufruct of the land shall be treated a complete usufructuary mortgage. To both transactions section 95 (4) (5) shall apply. Provisions of the Transfer of Property Act shall not apply to such kinds of transaction.

Transactions subsisting when P.O. 88 of 1972 was promulgated are hit by section 91A save and except those which were not alive when P.O. 88 of 1972 was promulgated being transactions past and closed.

After an enjoyment of the usufruct for a maximum period of seven years under section 95A the raiyat has the right to get back the property as provided in section 95 (32 DLR (AD) 233).

Transaction entered into with raiyat by way of mortgage is not governed by the transfer of Property Act but must be deemed a complete usufructuary mortgage as defined in Bengal Tenancy Act.

The High Court Division has fallen into error by construing the expression "transfer" in the context of the Transfer of Property Act. Since 1928 the legislature wanted to take out the transaction of the raiyat from the perview of Transfer of Property Act for which specific definition was supplied, namely, "complete usufructuary mortgage" in the Bengal Tenancy Act. So far as the complete usufructuary mortgages are concerned with its meaning as given by the law there is no question of vested interest.

The High Court Division observed that the vested right of the property should not be extinguished "except in the manner as provided in the second part of Article 42(1) or 47 (1)". There is however, no question of vested right because the complete usufructuary mortgage presuposes the restoration of land to the transferor either by redemption or by effux of time whichever is earlier.

A tranferee enjoyed the rights during these years before redemption or restoration and the transaction known in vernacular "khai khalashi" for which both the principal and interest are liquidated. Therefore, the question of vested right does not arise, nor can it be said that the raiyat gets it as a windfall because, after all the property is his and he had to transfer it as complete usufructuary mortgage or "khai khalashi" in order to obtain loan (32 DLR (AD) 233).

96. **Right of preemption.**- (1) If a portion or share of a holding of a raiyat is transferred, one or more co-share tenants of the holding may, within four months of the service of the notice given under section 89, or, if no notice has been served under section 89, within four months of the date of the knowledge of the transfer, apply to the Court for the said portion or share to be transferred to himself or themselves; and if a holding or a portion or a share of a holding is transferred, the tenant or tenants holding land contiguous to the land transferred may, within 4 months of the date of the knowledge of succh transfer, apply to the Court for the holding or portion or share to be transferred to himself or themselves :

Provided that no co sharer tenant or tenant holding land contiguous to the land transferred shall have the right to purchase under this section unless he is a person to whom transfer of the holding or the portion or share thereof, as the case may be, can be made [1][under [2][section 90]].

(2) In an application made under sub-section (1) by a co-sharer tenant or co-sharer tenants, all other co-sharer tenants of the holding and the transferee shall be made parties; and in succh an application made by a tenant holding land contiguous to the land transferred, all the co-sharer tenants of the holding and all the tenants holding lands contiguous to the land transferred and the transferee shall be made parties.

(3) (a) An application made under sub-section (1) shall be dismissed unless the applicant or applicants, at the time of making it, deposit in the Court the amount of the consideration money or the value of the transferred holding or portion or share of the holding as stated in the notice under section 89 or in the deed of transfer, as the case may be, together with compensation at the rate of ten per centum of such amount.

1. The words and figures "under sections 88 and 90" were subs. for the words and figures "under section 90" by E.P. Ord. XV of 1961, s. 12.

2. The word and figures "section 90" were substituted for the words and figures "sections 88 and 90" by E.P. Act XVII of 1964, s. 6.

(b) On receipt of such application accompanied by such deposit, the Court shall give notice to the transferee and to the other persons made parties thereto under sub-section (2) to appear within such period as it may fix and shall require such persons to state the consideration money actually paid for the transfer and shall also require the transferee to state what other sums he has paid in respect of rent since the date of transfer and what expenses he has incurred in annulling encumbrances on, or for making any improvement in respect of, the holding, portion or share transferred, and the Court shall then, after giving all the parties an opportunity of being heard after holding an enquiry as to the actual amounts of the consideration money and rent paid and the expenses incurred by the transferee in annulling encumbrances on, or for the improvement of, the land transferred, direct the applicant or applicants to deposit a further sum, if necessary, within such period as it thinks reasonable :

Provided that the transferee shall, in no case, be entitled to claim coonsideration money in excess of the amount mentioned in the deed of transfer.

(4) When an application has been made under sub-section (1), any of the remaining co-sharer tenants incleuding the transferee, if one of them, and the tenants holding lands contiguous to the land transferred may, within the period referred to in sub-section (1) or within two months of the date of the service of the noticee of the application under clause (b) of sub-section (3), whichever be earlier, apply to join in the said application; any co-sharer tenant or tenant holding land contiguous to the land transferred, who has not applied either under sub-section (1) or under this sub-section, shall not have any further right to purchase under this section.

(5) (a) If (i) a co-sharer tenant whose interest has accrued by inheritance and (ii) a co-sharer tenant whose interest has accrued by purchase and (iii) a tenant holding land contiguous ,to the land transferred apply under this section and comply with the provisions herein contained, the applicant or applicants shall have the prior right to purhase under this section in the order in which they have been mentioned above.

(b) If more than one tenant holding land ocntiguous to the land transferred apply under this section, the Court shall determine the order of priority as among such tenants having regard to -

(i) the total quantity of land in possession of each of the tenants applying;

(ii) whether the contiguous land of the tenant is homestead land or any other class of land;

(iii) extent of contiguity;

(iv) to what extent it is necessary for the applicant to have possession of the contiguous land; and

(v) the right of easement, if any, of the applicants.

(6) (a) On the expiry of the period within which an application may be made under sub-section (4), the Court shall determine, in accordance with the provisions of this section, which of the applications filed under sub-section (1) or sub-section (4) shall be allowed.

(b) If the Court finds that an order allowing the applications made under this section is to be made in favour of more than one applicant, the Court shall determine the amount to be paid by each of such applicants and, after apportioning the amount, shall order the applicant or applicants who have joined in the original application under sub-section (4)

deposit the amounts payable by him or them within such period as it thinks reasonable and if the deposit is not made by any such applicant within such period, his application shall be dismissed.

(7) (a) On the expiry of the period within which a deposit, if any, is to be made under clause (b) of sub-section (6), the Court shall pass orders allowing the application or applications made by the applicant or applicants who are entitled to purchase under and have complied with the provisions of the section and, when such orders are passed in favour of more than one applicant, shall apportion the holding or the portion or share of the holding among them in such manner as it deems equitable; and the applicant or applicants under sub-section (10, if found to be entitled to a refund of any money, shall get the refund from the amount deposited by the applicant or applicants under clause (b) of sub-section (6).

(b) The Court shall, at the same time, pass an order directing that the transferee be paid out of the deposits made under sub-section (3) the amount of consideration money paid by him for the transfer together with compensation at the rate of ten per centum of such amount, the amount, if any, paid by him on account of rent of the holding, portion or share transferred since the date of transfer and the amount of expenses, if any, incurred by him in annulling encumbrances on, or for making any improvement in respect of, such holding, portion or share.

(8) No apportionment order under sub-section (7) shall operate as division of the holding.

(9) From the date of the passing of the order under sub-section (7) -

(a) the right, title and interest in the holding or portion or share thereof accruing to the transferee from the transfer shall, subject to any orders passed under the said sub-section, be deemed to have vested free from all encumbrances which have been created after the date of transfer in the co-sharer tenants or in the tenants holding lands contiguous to the land transferred, as the case may be, whose applications to purchase have been allowed under sub-section (7);

(b) the liability of the transferee for the rent of the holding or portion or share from the date of the transfer shall cease; and the co-sharer tenants or the tenants holding lands contiguous to the land transferred whose applications to purchase have been so allowed shall be liable for any such rent due from the transferee; and

(c) the Court on further applications of such applicant or applicants may place him or them, as the case may be, in possession of the property vested in him or them.

(10) Nothing in this section shall apply to -

(a) a transfer to a co-sharer in the tenancy whose interest has accrued otherwise than by purchase; or

(b) a transfer by exchange or partition; or

(c) a tranfer by bequest of gift (including heba but excluding heba-bil-ewaj for any pecuniary consideration) in favour of the husband or wife of the testator or donor, or of any relation by consanguinity within three degrees of the testator or donor; or

(d) a simple or compelte usufructuary mortgage or, until a decree or dorder absolute for foreclosure is made, a mortgage by conditional sale; or

(e) a wakf in accordance with the provision of the Muhammadan Law; or

(f) a dedication for religious or charitable purposes without any reservation of pecuniary benefit for any individual.

Explanation.- A relation by consanguinity shall, for the purpose of this section, include a son adopted under the Hindue Law.

(11) Nothing in this section shall take away the right of pre-emption conferred on any person by the Mohammadan Law.

(12) An application under this section shall be made to the Court which would have jurisdiction to entertain a suit for the possession of the land in connection with which the application is brought.

(13) An appeal shall lie to the ordinary Civil Appellate Court from any order of a Court under this section and, notwithstanding anything contained in any other law for the time being in force, there shall be no second appeal from an order of the first Appellate Court.

Comments

Synopsis

1. Pre-emption - Nature of the right.
2. Cause of action for pre-emption.
3. Effect of reconveyance of the land to the vendor.
4. Nature of the land sought to be pre-empted.
5. Time for application.
6. Limitation for application.
7. Impleading of necessary parties.
8. Amendment of pre-emption application.
9. Claim of pre-emption by contiguous land holder.
10. Preferential right to pre-empt by different grades of claimants.
11. Application for rateable pre-emption.
12. Deposit of consideration money.
13. Amount to be paid by the co-applicant for rateable pre-emption.
14. Splitting up of jama and pre-emption right.
15. Partial pre-emption.
16. One application for different sale.
17. Several plotes pre-emption in respect of.
18. Question of benami transaction.
19. Waiver and acquiesence in pre-emption right.
20. Miscellaneous.

1. Pre-emption - Nature of the right.- Pre-emption has been described in authoritative judgments as a predatory right, and while it must be allowed where the necessary conditions are satisfied, the Courts have frequently given their approval to certain modes by which title can be acquired, which place difficulties in the way of pre-emption (19 DLR (SC) 136).

Right of pre-emption under section 96 of the S.A.T. Act is a statutory right and is to be exercised within the scope of the statute itself. There is no embergo in the S.A. T. Act that the right of pre-emption shall stand forfeited if a desqualified person is joined with the pre-emptor in an application for pre-emption. A joint deposit of consideration money does not frustrate a right of pre-emption (30 DLR 75).

The vendee of a co-sharer who owns an undivided land in common with another is clothed with the same rights as the vendor has in the property, no more and no less. If the vendor was in exclusive possession of a certain portion of the Joint land and transfers its possession to his vendee, so long as there is no partition between the co-sharers, the vendee must be regarded as stepping into the shoes of his transferor *'qua'* his ownership rights in the joint property, to the extent of the area purchased by him, provided that the area in question does not exceed the share which the transferor owns, in the whole property. Alienation of specific plots transferred to the vendee would only entitle the later to retain possession of them till such time as an actual partition by metes and bounds takes place between the co-sharers (11 DLR (SC) 78).

There being no word of limitation as to the nature of transfer in section 96 of the Act any transfer which is a transfer in the eye of law, subject to the restrictions laid down in the section, is pre-emptible (32 DLR (AD) 183). A sale in pursuance of a decree for specific performance of contract is pre-emptible (32 DLR (AD) 183).

Subject of pre-emption must be strictly construed as it operates as a clog on a citizen's right to deal with his property in the way he likes (32 DLR (AD) 54).

The proceeding under section 96 of the East Bengal State Acquisition and Tenancy Act is in the nature of a suit. The right, title and interest of the transferee vests in the petitioner, if he is successful and as such the order passed in a pre-emption proceeding conclusively determines the rights of the parties with regard to the land in dispute and as such this is an original proceeding and the determination of the right of parties are conclusive, whether it is called a decree or an order and the effect is the same. Therefore, the provisions of order 23, rule 3 of the C.P.C. would apply in a proceeding under section 96 of the East Bengal State Acquisition and Tenancy Act, whether it is in the trial Court or in the Appellate Court (33 DLR 168).

The word 'transfer' in sub-section (1) of section 96 is not limited to voluntary transfer only, but also includes involluntary transfer, that is to say, sale held in execution of a certificate. This is obvious from the fact that section 89 contemplates service of notice on the co-sharer tenants in the event of an execution of sale. Petitioner purchased the disputed property in a sale held in execution of a certificate. The opposite party claiming to be the co-sharer tenant of the holding by inheritance filed an application for pre-emption of the disputed property. Held that the opposite party is entitled to pre-empt the land under section 96 of the S.A.T.Act (22 DLR 489).

2. Cause of action for pre-emption.- Cause of action for pre-emption accrues on the date of registration of a sale deed when registration is compulsory, because the right of pre-emption arises on completion of a transfer. If a pre-emption application is filed before registration of the sale deed, it is not to be dismissed on the ground of pre-maturity if the same is registered during the pendency of pre-emption proceeding (43 DLR (AD) 9; 33 DLR 254).

Long line of decisions of the erstwhile Dhaka High Court Division has followed the principle that the date of accrual of the right of pre-emption is not the date of execution of the sale deed but the date of registration under section 60 of the registration Act (42 DLR (AD) 123). A co-sharer is competent to initiate the present pre-emption proceeding by filing one application under section 96(1) of the S.A.T. Act by preempting lands transferred by different kabalas where cause of action has been united under Orde. 2, rule

3 C.P.C. and the preemptor is not required in law to seek leave of the Court for this purpose (42 DLR 253).

Transfer to a co-sharer whose interest in the tenancy accrued by inheritance cannot be pre-empted. Even if the father of such co-sharer acquired interest in the tenancy by purchase he is co-sharer by inheritance (1983 BLD (AD) 103=1983 BCR (AD) 81).

Right of preemption does not accrue on the initiation of a proceeding by a co-sharer tenant or owner of the contiguous land. Preemption right accrues on transfer of the land (33 DLR (AD) 113).

When the pre-emption case was filed, kabala was not registered. It was however registered when the case came up in the appeal, at the appellate stage. But as at that stage the kabala was registered, the defect about the document not being registered was cured. Case remanded to the Lower Court for disposal (34 DLR (AD) 220). If the registration of the sale deed takes place when a revision arising out of the pre-emption case was pending in the High Court Division the application should not be rejected even though on the date when it was filed in the original Court the application was premature, since during the pendency of the case before the High Court Division document was duly registered (34 DLR 264).

Pre-emption application maintainable if the kabala (though not registered when the pre-emption application was filed) is registerd when the pre-emption proceeding is pending in Court (34 DLR 402).

3. Effect of re-conveyance of the land to the vendor.- There is nothing in the Act to render reconveyance to the vendor during the pendency of the pre-emption proceedings invalid. Such re-transfer is perfectly valid between the parties (37 DLR 324; 1986 BLD 130).

Sale of the land took place on 23.8.74, reconveyance took place on 21. 3. 78. Pre-emption proceeding started on 19.12.77. Trial Court's order granting pre-emption was on 30.1.80. So when the Court's order was passed on 30.1.80 ther was nothing to be pre-empted (37 DLR 324).

The right of pre-emption does not arise if by virtue of transfer, the vendor actually gets back the land. But if the transfer is colourable one, the mere paper tranaction cannot defeat the right of pre-emption; because a colourable transfer is not a transfer in the eye of law (35 DLR (AD) 225).

The application for preemption must fail as the land had already been reconveyed to the original owner (29 DLR 229 (153); 35 DLR 222).

Pre-emption application having been filed in Court any reconveyance of the property by the transferee to the transferor will not defeat the application for pre-emption. If reconveyance has been effected as a result of the agreement between the transferor and the transferee, the preemptor, if he has notice of such agreement prior to this application for pre-emption will take the land subject to the agreement to reconvey (19 DLR 677).

Between the dates of filing of the application for pre-emption, and its final disposal the vendor filed a suit for specific performance of contract against the transferee on the ground that at the time of the transfer of the holding the transferee stipulated to reconvey the property to the vendor and on that agreement obtained an exparte decree against the transferee. Held that this being the situation pre-emption application cannot be granted (29 DLR 164).

In the event of re-transfer of the land in question by the vendee in favour of the vendor by a valid deed, as distinguished from a subsequent transfer by the vendee to a third party, before the commencement of pre-emption proceeding the sale is completely wiped out; it is rendered non est, and the right to pre-emption arising from the original sale is nipped in the bud, and no cause of action survives for initiating a proceeding for pre-emption.

If the sale does not subsist and the right does not survive, after the reconveyance, the Court will not pass an infructuous order, though the pre-emption case has been quite legally commenced (37 DLR 324).

Right of pre-emption confers a right to purchase a holding or a share or portion thereof sold through the coercive process of the Court. It does not create in favour of the pre-emptor a right to or in the property sold till the final order is made under section 96(7) of the Act. Before the final order is made accepting the preference of the pre-emptor it is a mere claim to purchase, which may or may not be sustained in the end. In terms of the section the coercive transfer through Court in favour of the pre-emptor. It is a right to be substituted in the place of the vendee, if the pre-emptor can establish his right superior to that of the vendee. If the final order cannot be made under sub-section (7) of section 96 of the Act for any reason, the pre-emptor does not acquire any interest in the property sold (37 DLR 324).

The section takes for granted that right of the pre-emptor to pre-empt and the sale giving rise to cause of action will subsist till the final order is made. If the pre-emptor's interest in the holding is lost or the sale is tendered non-existent, the proceeding for pre-emption becomes infructuous. The object of the section is to direct transfer of the land under pre-emption from the pre-emptee to the pre-emptor on the basis of latter's preference in the matter (37 DLR 324).

There is nothing in section 96 of the Act which prevents the vendee from re-transferring the land sold to the vendor. The vendee is not obliged to provide opportunities to the pre-emptor to be substituted in his place through Court or otherwise so far as the sale under pre-emption is concerned. The vendor and the vendee are at liberty to avoid pre-emption by all lawful means (37 DLR 324).

In case of reconveyance to the vendor before the commencement of the proceeding, sale in question is rendered non est, and "the position will be as if no transfer wa at all made by him." The reconveyance to the vendor of the property sold, as distinguished from subsequent transfer to a third party, renders the sale non est, not because it is made before the commencement of the pre-emption proceedings, but because thereby the sale itself is under and effaced, by returning the property to the vendor by lawful means, either before or after the commencement of the proceeding (37 DLR 324).

4. Nature of the land sought to be pre-empted.- A vocation of tenant does not determine the character of the land. The initial purpose for which the lease is created and the subsequent user of it determines the nature of the land. Entry in the C.S. and S.A. khatians that the land is a Bhiti meaning it to be a non-agricultural land cannot be wiped out merely on the basis of a recital in the deed describing the land as a 'chashi bhiti' land. Although from the homestead standing on the disputed land agricultural operation is carried out, that does not change the nature of the land. Appellate Court judgment dismissing the pre-emption case as being not maintainable under section 96 of the Act needs no interference (43 DLR 510).

Homestead within a municipality or non-agricultural land cannot be pre-empted under section 96 of the Act by a contiguous owner of the land. Purpose for which the land was leased out is the determining factor whether it is agricultural or non-agricultural land (21 DLR 633).

Section 96 of S.A.T. Act would apply to agricultural land lying outside the municipal areas and section 24 of the Non-agricultural Tenancy Act would be applicable to all classes of land whether agricultural or non-agricultural within the municipal areas (33 DLR (AD) 326).

5. Time for application.- Sub-section (1) of section 96 of the Act requires an application for pre-emption to be made by a co-sharer within four months from the date of knowledge of the sale when no such notice was issued (19 DLR 655) petitioner seeking pre-emption is to prove the date of his knowledge of transfer and that his petition is within time (29 DLR 178).

A notified co-sharer tenant may apply for pre-emption within four months from the date of service of the notice and a non-notified co-sharer tenant as well as tenants having lands contiguous to the land transferred may apply for pre-emption within four months of the date of knowledge of the transfer (21 DLR 463).

The initial knowledge that the pre-emptor had while he heard about the said transfer in the last part of Magh 1382 B.S. attained maturity on 26.2.76 when he obtained the certified copy of the kabala transferring the land in question. In order to collect the full particulars for filing a pre-emption case under section 96 of the S.A.T.Act, the petitioner has to know the names of the vendees the number of plot of land and the quantum of land sold by the vendor in order to examine as to whether he is a contiguous owner of the proeprty sold or not. Unless he is definite as to whether he qualifies himself to file a petition under section 96 of the S.A.T.Act, he cannot file a proper petition. His initial knowledge that the plot in question was sold would not help him at all in a bid to file a preemption case. Knowledge as referred to in sub-section 1 of section 96 of the S.A.T.Act means and includes a definite and complete knowledge in order to qualify the petitioner to file an application under section 96 of the S.A.T. Act . Since the petitioner has given a specific date by stating that on 26.2.76 he obtained the certified copy of the kabala and he obtained the precise and complete knowledge as referred to in subsection 1 of section 96 of the S.A.T.Act as being obtained in that date by the petitioners. And the learned sub-judge has rightly computed four (4) months from the date of precise and complete knowledge so obtained on 26.2.76 for the purpose of limitation (42 DLR 24).

A finding as to knowledge of the petitioner about the sale of the land under pre-emption is a finding of fact and unless finding suffers from infirmity or it is preverse, the High Court Division will not interfere with the finding of the lower appellate Court in its revisional jurisdiction (42 DLR 253).

A co-sharer having his earlier and independent knowledge of transfer cannot apply for pre-emption under section 96 (4) of the Act but his relief is under section 96 (1) of the Act (30 DLR 75).

6. Limitation for application.- Limitation in case of a proceeding under section 96 of the act does not start from the date of execution of the document transferring the land but from the date when the document is registered under section 60 of the registration Act (43 DLR 506).

Heir of transferee added in a pre-emption case after the period of limitation. Pre-emption claim as against such heir barred (32 DLR 68).

When no notice is served on the co-sharer onus of proving date of transfer does not lie on the co-sharer. If however evidence on the issue is led by both the parties the Court may come to its conclusion on the basis of evidence led (35 DLR 238).

When the original pre-emption application fails on the ground of limitation the co-applicant's prayer for pre-emption (according to their share) under section 96(4) though made in time, not sustainable.

If the first application for pre-emption by a co-sharer tenant is made after the expiration of the periods of limitation it will not be a valid application within the meaning of the opening words of sub-section (4).

A co-applicant is entitled to preemption only when the first co-sharer petitioner has applied within the periods of limitation under section 96(1). Although the two Co-applicants in the present case applied within the two months of the date of the service of notice of the application under section 96(4) they are not entitled to the benefit of proportionate pre-emption (24 DLR 170).

Right of pre-emption can be exercised under sub-section (1) as well as under subsection (4) of section 96 which thus provide a two fold period of limitation. Sub-section (4) of section 96 provides that the remaining co-sharer including transferee may join in a pending application (30 DLR 75).

Since A has an earlier and independent knowledge of the transfer, he need not apply under sub-section (4); his application under section 96(1) competent ibid).

Expiry of time limit dates back from the date of knowledge. Impleading one as party after the expiry of time does not extend the time (14 DLR 847). When a minor sues through her natural and legal guardian being a mother as next friend, the knowledge of the mother as guardian shall be deemed to be the knowledge of the minor (34 DLR 217).

The petitioner seeking presumption is to prove his date of knowledge of transfer and that his petition is within time (29 DLR 178). The petitioner is to substantiate by uncontroverted evidence that he has come within the period of limitation (PLD 1969 Dhaka 390, 979).

7. Impleading of necessary parties.- Impleading of persons who are necessary parties to a pre-emption application is mandatory under sub-section (2) of section 96, which is not controlled by order 1 rule 9 C.P.C. (33 DLR (AD) 113; 1984 BCR (AD) 27).

Seller is a necessary party in a pre-emption proceeding if after his transfer, he still remain a co-sharer in respect of the property sold by him (26 DLR 359).

After the filing of the application for pre-emption and lapse of statutory period of limitation to pray for rateable pre-emption the cosharers tenants and other parties concerned become unnecessary parties and as such rule cannot be affected for not substituting the heirs (21 DLR 263).

In a proceeding under section 96 of the S.A. T. Act the provision of order 1 rule 13 C.P.C. is applicable as to the defect of parties, which was not taken before trial, could not be taken during the trial or at the appellate stage (28 DLR (AD) 8). Objection as to mis-joinder of parties if not raised shall be treated as have been waived (28 DLR (AD) 5).

To give full effect to the statutory provisions, all necessary parties must be impleaded, because relief cannot be given in the absence of such party (33 DLR (AD) 113). If the pre-emptee or for that matter any of the parties disclose, existence of necessary party and furnishes the necessary particulars, but the pre-emptor still insists not to implead him as a party, consequence on adjudication is the same. It has already been mentioned that such objection regarding non-joinder of necessary parties should be taken at the earliest opportunity, before the trial, because an enquiry on this question may be necessary. In an appropriate case such objection may be allowed to be raised in the appeal. This may be done on the ground that the appeal is continuation of the suit or proceeding. But there is no scope for raising the question of defect of party on account of non-joinder of necessary party is for the first time in revision (33 DLR (AD) 113).

co-sharer in one of the plots of the holding is a co-sharer in the holding. Impleading of a co-sharer, whether by inheritance or by purchase, in an application for pre-emption under section 96 of the Act is mandatory. Omission to implead a co-sharer in the application renders the pre-emptor application liable to be dismissed for defect of party (42 DLR (AD) 1).

The right of pre-emption shall not be forfeited if disqualified person is joined in an application for pre-emption (30 DLR 75). Impleading of a necessary party in the pre-emption proceeding is a mandatory duty for the pre-emptor (BCR 1984 AD 271). All the necessary parties to the pre-emption application must be impleaded (33 DLR (AD) 113).

Sub-section (2) of section 96 provides that in an application for pre-emption by a co-sharer tenant, all other co-sharers tenants shall be made parties, a contiguous land holder is not a necessary party there. But if an application for pre-emption is made by a contiguous landholder, all the co-sharer tenants (whether by inheritance or by purchase) and also all other tenants holding lands contiguous to the land transferred, shall be made parties (37 DLR (AD) 220; 31 DLR (AD) 88).

Objection as to omission of a necessary party, if not taken at the earliest opportunity, will be treated as waived (31 DLR (AD) 88).

A co-sharer applicant for pre-emption may add a subsequent transferee from the original transferee who may be stubstituted for the original transferee and such subsequent transferee entitled only to the amount deposited in favour of the original transferee (35 DLR 238). Subsequent transferee takes the transfer subject to the right available against the original transfer whether the transfer was made before or after the application for pre-emption (35 DLR 238).

Application for pre-emption cannot be said to be not maintainable because necessary parties were impleaded by subsequent amendment after the expiry of the period of limitation, when the application for pre-emption itself was made in time (19 DLR 655; 37 DLR 151).

Impleading of persons who are necessary parties to a pre-emption application is mandatory under sub-section (2) of section 96, which is not controlled by Order 1 rule 9 C.P.C. (33 DLR (AD) 113).

There is no necessity to draw any analogy between a partition suit and a pre-emption case as to the making of parties in that the provision as to parties in a partition suit is governed by Order 1, rule 10 C.P. Code whereas the provision as to parties in a pre-emption proceeding is governed by section 96(2), State Acquisition And Tenancy Act. This section specifically provides that all co-sharer tenants and all contiguous land

if pre-emption is sought by a contiguous land holder 'Shall be made parties'. Impleading of such persons will not however be necessary if they have lost their interests in the land to be pre-empted or if they have waived their right to the pre-emption (33 DLR (AD) 269).

Pre-emption under 2nd part of section 96(1). According to sub-section 5(b) in an application for pre-emption only those tenants holdings lands contiguous to the land sought to be pre-empted are to be impleaded: and tenants holding lands contiguous to other lands transferred under the kabala but not subject matter of pre-emption are not required to be impleaded. Sub-section (5) (b) removes any doubt that there might be (31 DLR (AD) 88).

8. Amendment of pre-emption application.- Kabala dated 25.9.1978 and 9.11.78 were registered on 30.9.1981 and 31.10.81 respectively. The pre-emption application was filed on 25.11.81 whiech was within time. The transferee pre-emptor objected to the pre-emption application stating that the pre-emptor had ceased to be a co-sharer with the splitting of the original jote and the separate khatian was created. The pre-emptor at this stage filed an application for amendment stating that in view of this position it was necessary to claim pre-eption as contiguous owner. Amendment was not allowed by the Court and the same was affirmed by the High Court Division.

Before Appellate Division question arose as to whether amendment of pre-emption application introducing a new claim for pre-emption on the basis of contiguous ownership of the disputed lands would materially alter the nature and character of the proceeding particularly when it is barred by limitation.

Held: As a rule no amendment is allowed where its effect will take away any legal right, which might have accrued by lapse of time. Here the transferee has failed to show what legal right had accrued to him which will be washed away by allowing the amemdment. Then again as a rule the Court refused an amendment if the amendment introduces a totally new and inconsistent case which may require further evidence to be added by the opponent.

As noticed, the appellant claimed pre-emption either as a co-sharer in the jote or as a tenant holding land contiguous to the land transferred. This was necessary because the respondent took the plea that by the aforesaid mutation case a separate khatian had been created. As a precaution, this amendment was prayed for. On a perusal of section 96 it will be clear that a co-sharer tenant of a holding and the tenant holding land contiguous to the land transferred may bring a pre-emption proceeding. In this case the appellant prayed alternatively either as a co-sharer tenant or tenant holding contiguous land. Order 6, rule 17 of the C.P.C. provides for allowing amendment "for determining the real question in controversy between the parties." The question of limitation may arise in two ways : (1) Whether the claim to be included was barred on the date of the institution of the suit. (2) Whether the claim is barred on the date of the prayer for amemdment. In the case of Nurun Nahar Vs. Mohd. Fazlur Rahman reported in Bangladesh Supreme Court Report (1979) 135 it was held that "once an amendment of the plaint is allowed the amemdment will relate back to the date of the institution of the suit, and will be operative from that date. "Necessarily in this case the amemdnent will be within time, inasmuch as the pre-emption petition was within time. The privy Council even went further to observe that amendment of the pleadings can be allowed even when a legal right has accrued to the other party, if special circumstances of the case outweigh such circumstances.

In the present case no legal right has accrued to the respondent. The only right that accrued to him was under section 96(4) for filing the application for rateble pre-emption and the limitation is prescribed, namely, he must file such application within two months from the date of the order allowing the amendment. This was not done. Such omission would not stand in the way of the appellant for claiming pre-emption either as a co-sharer tenant or as a tenant holding land contiguous to the land transerred. The amendment is allowed (42 DLR(AD) 110= 1986 BLD (AD) 221= BCR 1986 AD 159).

The suit for pre-emption was framed as one under section 96 of the E.B.S.A. T. Act but subsequently it being found, having the nature of the land, that pre-emption could be claimed under section 24 of the E.B. Non-agricultural Tenancy Act a prayer for treating the claim as one under section 24 of the E.B. Non-agricultural Tenancy Act was made before the High Court Division which Court rejected it on the ground that it was a new case altogether. Held: the prayer ought to have been granted as it is not correct to say that new case has been made. Such amendment could also be allowed if no mention of section 24 is made in the plaint (27 DLR (SC) 114).

9. Claim of pre-emption by contiguous land holder.- As it appears clearly from sub-section (5)(a)(i), a co-sharer by inheritance gets the first priority and if he claims pre-emption he will exclude all other claimants. If a co-sharer by purchase claims pre-emption, the claim of a contiguous land holder stands superseded (37 DLR (AD) 220).

Contiguous land holder may pre-empt only that part which is contiguous to his land (34 DLR (AD) 217). When plots are several in number, but themselves constitute one compact block, the entire compact block is to be treated as contiguous to the land of the person claiming pre-emption and claimant can pre-empt entire block (34 DLR (AD) 217).

Entire land constituting one compact block (though in khatian they are recorded as several plots of land) can be pre-empted on the basis of consanguity under section 96 (34 DLR (AD) 217).

Contiguous means 'touching'; if the Government is the owner of the contiguous land, contiguity in respect of land touching the Governemnt's land is broken (32 DLR (AD) 55). "Extent of contiguity of land" is the only test for determining the order of priority as amongst tenants claiming pre-emption on the ground of holding land, contiguous to the land tansferred. If land transferred consists of one plot, all the tenants having land contiguous to the land under pre-emption are to be impleaded. The right is to be determined in the manner as provided in sub-section (5)(b). In a case where land transferred consists of more than one plot, a tenant or tenants having land contiguous to the plots may apply for pre-emption but in such a case, a tenant having land contiguous only to one of the plots, cannot claim pre-emption of other lands (31 DLR (AD) 88).

The word 'contiguous' and 'contiguity' in clause (b) of sub-section (5) to be enterpreted to mean touching or adjacent and not meaning neighbouring (32 DLR (AD) 54). Priority of the applicants is to be determined having regard to (i) the total quantity of land in possession of each of the tenants; (ii) whether the contiguous land of the tenant is homestead and or any other class of land; (iii) extent of contiguity; (iv) to what extent it is necessary for the applicant to have possession of the contiguous land; and (v) the right of easement, if any, of the applicants (32 DLR (AD) 54).

Clause (b) of sub-section (5) sufficiently indicates that pre-emptor must show that his land is contiguous to the land transferred, that is to say, it is touching with the land transferred. Only when he can maintain his claim. In the case of more than one tenant

fulfilling the requirements to claim pre-emption. In determining the order of inter-se priority one of the criteria for consideration is extent of contiguity (32 DLR (AD) 54).

When between the land transferred and the piece of land whose owner seeks pre-emption on the ground of contiguity, a public pathway intervens, the contiguity is broken and pre-emption cannot be allowed (Ibid).

It is very often noticed that pre-emption under section 96 is allowed to a tenant having land contiguous to one of several plots transferred, and pre-emption is allowed even in cases where the lands are not in a compact block, which is contrary to the provision of law itself. If more than one plot of land is transferred by a sale deed, a tenant having land contiguous to one of the plots, cannot lay his claim of pre-emption beyond that plot, because the consanguity cannot be stretched to other plots (32 DLR (AS) 54).

10. Preferential right to pre-empt by different grades of claimants.- Transfer to a co-sharer whose interest in the tenancy accrued by inheritance cannot be pre-empted. Even if the father of such co-sharer acquired interest in the tenancy by purchase he is co-sharer by inheritance (1983 BLD (AD) 103=1983 BCR (AD) 81).

A transfer to a co-sharer in the tenancy whose interest has accrued otherwise than by purchase, such as by inheritance, is not pre-emptible. This means, all other co-sharers by inheritanc will be debarred from pre-emption by this sub-section (10). But in the case of a transfer to a co-sharer by purchase, it is not so protected from pre-emption and any other co-sharer, whether by purchase or by inheritance, may claim pre-emption. But it does not mean that pre-emption may be claimed by a contiguous land holder when the land has been transferred to a co-sharer by purchase (37 DLR (AD) 220).

As appears clearly from sub-section 5(a)(i), a co-sharer by inheritance gets the first priority and if he claims pre-emption he will exclude all other claimants. If a co-sharer by purchase claims pre-emption the claim of contiguous land holder stands superseded (37 DLR (AD) 220).

Clause (a) of sub-section (5) shows that law recognises 3 classes of pre-emptors :

(i) a co-sharer tenant whose interest has accrued by inheritance;

(ii) a co-sharer tenant whose interest has accrued by purchase; and

(iii) a tenant or tenants holding land contiguous to the land transferred.

The statute gives priority to the co-sharer tenant whose interest has accrued by inheritance. The first class excludes both second and third class, and the second class excludes the third class. Clause (a) provides necessary guidance for determining order of priority among the tenants claiming pre-emption on the ground of having lands transferred (31 DLR (AD) 86; 34 DLR 177; 34 DLR 180).

Father got the land (subject matter of pre-emption) from one of the original owners by purchase. Sons by devolution get the same on father's death. Sons are co-sharers with the original owners by inheritance (35 DLR (AD) 54).

11. Application for rateable pre-emption.- Application for rateable pre-emption under section 96(4) not possible unless application under section 96(1) was first made (14 DLR 204). Claim for rateable pre-emption by the transferee can be made even in his written statement which he files in transversing pre-emption application under section 96 S.A.T.Act (36 DLR 250).

Under section 96(6) (b) of the S.A.T. Act, it is the duty of the Court while alowing an application of a co-applicant for for proportionate pre-emption to determine the amount to be paid by the co-applicant within reasonable time and the co-applicant is not required to deposit the amount *suo motu* on his application. The right of a co-applicant to proportionate pre-emption is lost by dismissal of the original pre-emption case but on restoration of the same at the instance of the original applicant the right of the co-applicant is restored although the restoration of the original case was not at his instance inasmuch as the case is restored in its entirety with all its legal consequences (40 DLR 246).

Eleven co-sharers claimed pre-emption in respect of the land transferred. The trial Court granted the prayer for preemption but the lower appellate Court dismissed the whole pre-emption case, as against this order of dismissal one out of eleven co-sharers moved the High Court in revision. High Court upheld the order of the Munsif but held that the petitioner before the High Court is entitled to pre-empt only to the extent of his own share and nothing more (21 DLR 647).

12. Deposit of consideration money.- Deposit of consideration money if does not accompany the application for pre-emption but made later on if the deposit is within 4 months from the date of the registration of the deed or 4 months from the knowledge of transfer is a sufficient compliance with law and is valid deposit under the law (34 DLR 272).

A joint deposit of consideration money does not frustrate a right of pre-emption (30 DLR 75).

13. Amount to be paid by the co-applicant for rateable pre-emption.- Under section 96(6)(b) of the state Acquisition and Tenancy Act it is the duty of the Court while allowing an application of a co-applicant for proportionate pre-emption to determine the amount to be paid by the co-applicant within reasonable time and the co-applicant is not required to deposit the amount *suo moto* on his application. Unless an order determining the amount to be paid by the co-applicant is made by the Court, the consequence provided in clause (b) of sub-section (6) of section 96 of the Act will not come into play (40 DLR 246).

The right of a co-applicant to proportionate pre-emption is lost by dismissal of the original pre-emption case but on restoration of the same at the instance of the original applicant the right of the co-applicant is restored although the restoration of the original case was not at his instance in as much as the case is restored in its entirety with all its legal consequences (40 DLR 246).

Provision of law as to deposit by subsequent applicant seeking rateable pre-emption is very clear. Sub-section (4) of section 96 provides that after an application has been made under sub-section (1), any of the remaining co-sharers tenants including the transferee, if one of them, may apply to join in the original application for pre-emption within the specified time. Clause (b) of sub-section (6) of this section requires any subsequent applicant for rateable pre-emption, if his claim is allowed, to make proportionate deposit within the time specified by the Court, failing which his claim for rateable pre-emption shall fall through (38 DLR (AD) 265).

In the case of a transferee being one of such claimants, though he is entitled to receive the consideration money already deposited under sub-section (1), no separate provision has been made. This means that he is treated as any other remaining co-sharer tenants seeking rateable pre-emption. As such he is bound to make deposit.

However, the Court may in its discretion, exempt a transferee pre-emptee in whose favour rateable pre-emption is otherwise allowed, from making the deposit but to adjust this amount due from him against pre-emption money already deposited under sub-section (1) if a prayer to this effect is made to the Court in appropriate time (38 DLR (AD) 266).

The right of a co-applicant to proportionate pre-emption is restored on restoration of the pre-emption case (1989 BLD 37).

14. Splitting up of jama and pre-emption right.- With the sub-division of the original jama, the original co-sharers are no longer co-sharers of the jama and hence they cannot apply for pre-emption (39 DLR 76; 26 DLR 59 (AD); 18 DLR 281).

When a valid order under section 117 of the S.A.T. Act is on record, and the order has been given effect to, the Civil Court is not competent to ignore the order on the ground of finding some irregularity in the same as a Court of appeal, while dealing with the application under section 96 of the S.A.T.Act for pre-emption (33 DLR (AD) 309; affirmed in 35 DLR (AD) 338, and 39 DLR (AD) 76= 1987 BCR (AD) 199).

Mutation proceeding initiated after the filing of the pre-emption application is hit by the doctrine of lis pendens (39 DLR (AD) 76). The right of pre-emption is not affected by the experte order of sub-division of holding during the pendency of pre-emption proceeding. Sub-division of holding under section 117 (1) (c) of the S.A.T. Act does not bar the exercise of the right of pre-emption (1981 BCR (AD) 195).

In a mutation case for split up of a jama notice of the mutation case not having been served on the co-sharers and mutation been effected behind their back in law that is not valid splitting up of the jama and as such the co-sharers have not lost their right of pre-emption (33 DLR 324 (AD).

A decree in a partition suit does not result in splitting up the land which can be done under section 117 of the S.A.T. Act. Therefore right of pre-emption not extinguished by partition decree (35 DLR (AD) 236).

When such a valid order under section 117 is on record and the order has been given effect, the Civil Court is not competent to ignore the order on the ground of finding some irregularity in the same as a cout of appeal, while dealing with the application under section 96 of the Act for pre-emption (33 DLR (AD) 309).

Prima facie the order was a valid one, its validity could not be challenged for a collateral purpose, that is, in a proceeding of pre-emption. The Civil Court while dealing with altogether a different matter cannot ignore the order passed by a competent Revenue officer under section 117 of the Act (35 DLR (AD) 340).

The respondents were co-sharers by purchase. This fact is not denied. The document sought to be pre-empted is C.S. Khatian and C.S. plots. The pre-emption cannot be refused on the ground that a sub-tenancy was recorded in a S.A. Khatian. The explanation that on the wrong advice of the deed writer the document was drawn up is not tenable because in a pre-emption case it is the transfer which is sught to be pre-empted and the document in question is Ext. B (1982 BCR (AD) 431=1983 BLD (AD) 105).

Different sahams which were allotted to different co-sharers appertain to one holding. In the revenue records of the Government is also not shown that the holding has been splitted up. In case of transfer by one co-sharer of his share of the land in such case a pre-emption case will lie (35 DLR 65).

15. Partial pre-emption.- The partial pre-emption is to be understood with reference to the definition of holding read with provisions of section 96 of the Act and not with reference to the number of properties transferred by a particular deed. If a particular holding comprises several plots, for example, belonging to two or more co-sharers and if one of the co-sharers transfers his share in all the plots of the holding to a stranger purchaser, the remaining co-sharer or co-sharers in that case, shall have to apply for pre-emption with respect to all the plots, otherwise, it will amount to partial pre-emption and such partial pre-emption cannot be allowed because a co-sharer cannot be allowed to pick and choose arbitrarily (26 DLR 95).

Three separate plots of land were transferred by a deed of sale. A tenant holding land contiguous to the land transferred applied under section 96 for two out of three plots averring that these two plots are contiguous to his land. The Court on evidence found that only one plot was contiguous to the applicant's land and allowed pre-emption of that plot only. The High Court upheld this decision over ruling the contention that this will lead to partial pre-emption (29 DLR 195).

Five holdings were transferred by a single kabala. The petitoner deposited consideration money for four holdings seeking pre-emption thereon. There was no difficulty in allowing him pre-emption of four holdings as pre-emption is holding-wise such pre-emption is not hit by the doctrine of partial pre-emption (43 DLR (AD) 108). The effect and purport of section 96(1) of the S.A.T.Act is not that the right of pre-emption accrues only holding wise but also transaction wise. The clear intention of the legislature was to confer a right of pre-emption holding wise and not transaction wise. In the context of section 2 (13) of the S.A.T. Act read with section 96(1), the right of pre-emption has not been conferred with reference to the number of properties transferred by a particular deed. A district right has been conferred in respect of a distinct holding (43 DLR 276).

When the prayer in the application for pre-emption is for a part only of the entire land the Court is not required to make deduction that prayer must be read in respect of the whole.

The Court cannot enter into investigation regarding title of the vendor in the case. The pre-emption application was rejected on the ground of maintainability as partial pre-emption cannot be allowed (1985 BLD (AD) 183).

Partial pre-emption cannot be allowed where a co-sharer tenant claims pre-emption. Contiguous land holder may pre-empt only that part which is contigitous to his land (34 DLR (AD) 217).

16. One application for different sale.- One application for pre-emption was filed with regard to three independent sales of several holdings to which the applicant was a co-sharer tenant. The application is maintainable if it is not bound by limitation and not also barred otherwised (23 DLR 68).

17. Several plots-pre-emption in respect of.- If a particular holding comprises several plots, belonging to two or more co-sharers, and if one of the co-sharers transfers his share in all the plots of the holding to a stranger purchaser, the remaining co-sharers in that case, shall have to apply for pre-emption with respect to all the plots otherwise it will amount to partial pre-emption (24 DLR 186).

If lands consisting of several plots are transferred by a kabala, tenant or tenants holding land contiguous to the land of particular plot or plots are entitled to pre-empt

only the land or lands to which they have contiguous lands. In such a case the pre-emptor or pre-emptors are required to implead all the co-sharer tenants of the holding and all the tenants holding lands contiguous to the transfrred and the transferee.

Pre-emptor having been found to be a tenant holding land contiguous to only two plots out of three plots transferred. is entitled to pre-empt only the land to which he holds land contiguous thereto (31 DLR 88).

18. Question of benami transaction.- Question of benami transaction cannot be decided in proceeding under section 96 of the Act (35 DLR (AD) 334). Question of benami nature not to be agitated in pre-emption proceeding. But if in fact no transfer of the land took place and the alleged vendor continuing to be in possession. such question can be gone into (36 DLR (AD) 1).

Respondent - 1 claimed pre-emption of the transferred land sold under a kabala on the ground that the respondent 2 (the vendor) sold the land to A (i. e respondent 1) though he was a co-sharer in the holding by inheritance. A's case was that there was really no transfer as it was he (i.e. A) who purchased the land from respondent no 6 in October 1970 in the benami, respondent no 2 of his nephew. Held: In a proceeding for pre-emption under section 96 of the S.A.T.Act the Court is not required to entertain the question whether the vendor was benmder of the person seeking pre-emption (35 DLR (AD) 334).

Muktipatra - Its real import - The pre-emptee failed to prove his motive for acquisition of the case land in the benami of swapan Kumar. The question of deed of release by him infavour of pre-emptee Momtaz Ali does not arise and also the impugned deed is a transfer deed. The judgment of the High Court Division is liable to be set aside and the pre-emptor is entitled to the pre-emption (44 DLR (AD) 270).

19. Waiver and acquiescence in pre-emption right.- Facets provide in a particular case may give rise to waiver and acquiescence and a pre-emptor may be held to be estopped from enforcing his right of pre-emption. It will be a question of proper inference from the facts provided in each particular case as to whether the plea of waiver and acquiescence exists or not (42 DLR (AD) 189).

The foundation of the right is avoidance of inconvenience and disturbance which would arise from the introduction of a stranger into the land. Law of pre-emption imposes a limitation or disability upon ownership of a property to the extent that it restricts the owners unfettered right of sale and compels him to sell the property to his co-sharer or neighbour. The benefit and the burden of the right of pre-emption run with the land and can be enforced by and against the owner of the land for the time being. The right can be waived or relinquished at an earlier date than on the due of actual completion of sale under the law or thereafter (42 DLR (AD) 189). But no waiver of pre-emption right if a co-sharer does not exercise his right of pre-emption on the first transfer (17 DLR 384).

When the pre-emptor is in the loco parentis with the pre-emptess and negotiate the sale under pre-emption himself or the facts are such that his acquiescence in the sale can be safely concluded therefrom. the doctrine of estoppel comes into full play. The pre-emptor will be estopped from asserting his claim of pre-emption (38 DLR 361).

A pre-emptor who has given his consent before sale. should not be allowed to assert his claim after the sale (Ibid).

Waiver and acquiescence on the part of the pre-emptor may be inferred from the

circumstances (Ibid). By consenting to a transfer made in pursuance of a compromise decree a person loses his right of pre-emption altogether (38 DLR 361; 22 DLR 449 and AIR 1928 PC 190 relied on).

By consenting to a transfer made in pursuance of a compromise decree a person loses his right of pre-emption (22 DLR 449).

It is true, the right of pre-emption accrues after transfer of the land, and statutory right of pre-emption cannot be taken aay by mere verbal assurance of the person having such right, unless other facts and circumstances clearly make out a case of acquiescence or waiver. 'Acquiescence' arises when a person knowing that he is entitled to enforce some right neglects to do so for such a long time that the other person opposing such right may fairly infer that he has waived or abandoned it. It is failure to object to certain transaction or Act. 'Waiver' means simply abandonment of any claim or right.

As to his failure to procure the money to purchase the land, this cannot take away his right if he can come up within time. Similarly, his knowledge of the transaction and subsequent Acts of purchasers possession also do not constitute waiver or acquiescence. However, these Acts prove his knowledge of the sale and if he had not filed the applications for pre-emption within the prescribed time, four months under section 96 SAT Act, his applications would be barred by limitation. The application were filed by him one year after the dates of the sale deeds; but still these are not barred by limitation because the sale deeds were also registered one year after execution and presentation before the Sub-registrar. That is why the ground of limitation, though taken in the written objection, was not pursued by the pre-emptees. In the facts and circumstances of the case, it cannot be inferred that the pre-emptor had acquiesced in the sale or waived his right of pre-emption (44 DLR (AD) 63 (64).

20. Miscellaneous.- President's Order Numbers 88 and 136 of 1972 and No. 24 of 1973 are all valid legislation for effecting necessary amendments in the East Bengal State Acquisition and Tenancy Act and those laws cannot be attacked on the ground of ultra vires; (2) any transfer of a holding or part thereof by a raiyat either by way of out and out sale with an agreement to reconvey or where the transferor receives from the transferee any consideration and transferee acquires the right to possess and enjoy the usufruct, shall, notwithstanding anything contained in the document relating to the transfer, be deemed to be a complete usufructuary mortgage for a period of maximum 7 years and the provisions of section 95 (4) and (5) of the S.A.T.Act shall apply to such transfer; (3) and such transfers are not to be understood in the light of the Transfer of Property Act because those are to be understood in the light of the enactment in question; (4) those transactions which are subsisting on the date of promulgation of President's Order No. 88 of 1972 are hit by section 95A including the transaction entered into by way of an out and out sale with an agreement to reconvey, made whether before or after the promulgation of President's Order No. 88 of 1972; and (5) as for the transactions which were not alive before the promulgation of President's Order No. 88 of 1972 they are concluded by the transactions past and closed (32 DLR (AD) 233).

Order made under section 96 is an order within the meaning of it as given in section 2(14) C.P. Code.

The definition of an order given in the Civil Procedure Code fully applies in the case of an order passed by a Civil Court in a proceeding under section 96 of the State Acquisition and Tenancy Act (33 DLR 341).

A Hindu widow having only a life interest has inalienable right to pre-empt any land to which she is a con-sharer. Reversions right will not be affected as after widow's death the land shall revert to him (34 DLR 181).

A person against whom an ex parte decree has been passed cannot borrow the analogy of section 96 and take upon himself an added advantage of another 30 days to file the miscellaneous case (40 DLR 10).

Appeal against the order of dismissal of a case under section 96 (12) of the State Acquisition and Tenancy Act is maintainable. Dismissal of appeal is illegal (40 DLR 363).

Consideration of the documents as to the devolution of the vendor's interest on the pre-emptor did not materially affect the decision (40 DLR (AD) 264).

No appeal lies against an order dismissing an application made under Or. 9, r. 13 C.P. Code for restoring a proceeding under section 96, State Acquisition and Tenancy Act disposed of exparte.

The State Acquisition and Tenancy Act does not provide for any appeal from such an order i.e. and exparte order passed in an application under section 96 of the State Acqusition and Tenancy Act.

It is true that the earlier decisions are with regard to section 26F of the Bengal Tenancy Act but the material provisions of section 96F of the Bengal Tenancy Act and those of section 96 of the State Acquisition and Tenancy Act are substantially the same. The interpretation given earlier does not militate with the language of section 96 of the Act and so is applicable to the section as well (32 DLR (AD) 231).

In a case coming under the first part of section 96 (1) the pre-emptor is required to ask for pre-emption of the entire portion or share of the holding transferred. But in a case coming under the second part, the pre-emptor is required to claim pre-emption for the holding or portion or share. Instead of mentioned. If the land under pre-emption forms an entire holding, he (pre-emptor) is to apply for pre-emption of the holding. If the land under pre-emption forms a portion of the holding, the pre-emptor is to apply for the portion only (31 DLR (AD) 88).

In a case of pre-emption coming under the first part the pre-emptor is required to establish his locus standi by showing that he is a co-sharer tenant of the holding. In such a case rule of of partial pre-emption has been applied. In case of tenant's right of pre-emption falling under the second part, the pre-emptor is required to establish that he has land contiguous to the land transferred cannot be stretched to support the view, that even in such a case the pre-emptor is required to include in the application also the lands to which he does not hold contiguous land and implead all the tenants holding contiguous lands to non-contiguous lands (31 DLR (AD) 88).

Pre-emptor for a smaller area out of bigger area, allowable. Application for pre-emption for a smaller area of land consist conformity with sub-section (1) of section 96 of the Act (31 DLR (AD) 88).

A pre-emption coming under the second part of sub-section (1) of section 96 cannot maintain his application for pre-emption for the land transferred to which he has no contiguity. According to sub-section (5) (b), in such an application only those tenants holding lands contiguous to the land sought to be pre-empted are to be impleaded; and

tenants holding lands contiguous to other lands transferred under the kabala but not subject to pre-emption, are not required to be impleaded. Sub-section (5) (b) removes any doubt that there might be (31 DLR (AD) 88).

The statutory right of pre-emption, if otherwise available to opposite party No. 1 is not liable to be defeated by reason of an erroneous decision given by the Court on the question of jurisdiction. For, it is an universally recognised principle that the Court will not permit an injustice being done to any person by reason of an erroneous order made by it, and when the erroneous order is reversed, the Court will restore the parties to the position which they would have otherwise occupied but for the erroneous order (22 DLR 535).

Land sold in execution of a certificate-co-sharer is entitled to pre-emption.

Petitioner purchased the disputed property in a sale held in execution of a certificate. The opposite party claiming to be the co-sharer tenant of the holding by inheritance filed an application for pre-emption of the disputed property.

Held : The opposite party is entitled to pre-empt the land under section 96 of the E.B. State Acquisition and Tenancy Act (22 DLR 489).

A Hindu widow having life interest in the property is entitled to pre-emption under section 96 (1) of S.A.T. Act (34 DLR 178).

A person obtaining a decree for specific performance of contract for sale but before execution of the sale deed in pursuance of the decree is not a co-sharer in the holding and cannot pre-empt a sale subsequent to such decree (1986 BLD 137).

Sale in pursuance of a decree for specific performance of contract is pre-emptable under section 96 of S.A.T.Act (32 DLR 183).

The only point for consideration in this case is whether the donees are relations of the donor within three degrees of consanguinity. Sub-section (10) (c) of section 96 provides as follows :

"96 (10) (c). Nothing in this section shall apply to -

(a).....

(b).....

(c) a transfer by bequest or gift (including Heba-but excluding heba-bil-Ewaz for any pecunniary consideration) in favour of the husband or wife of the testator or donor, or of any relation by consanguinity within three degrees of the testator or donor."

Section 28 of the Succession Act 1925 read with schedule I thereof provides mode of reckoning degree of consanguinity. Section 28 provides as follows :

"28. Degrees of kindred are computed in the manner set forth in the table of kindred set out in schedule I."

From a look at schedule I of the succession act and a plain reading of clause (c) of section 96 (10) of the State Acquisition and Tenancy Act, it is clear that daughter's sons are outside the three degrees of the consanguinity. They cannot therefore, get the protection of clause (c) of sub-section (10) of section 96 of the S.A.T.Act (44 DLR 228). Transfer in favour of sister's sons, he being a relation by consanguinity within three degrees of the donor, cannot be pre-empted (20 DLR 376).

Pre-emption- Plea of gift to defeat pre-emption when not tenable. The deed of gift though executed earlier was registered after registration of the disputed sale deed sought to be pre-empted. So the deed of gift cannot have the effect of destroying the right of pre-

emption nor can it affect the right of pre-emption in as much as a party at his own will cannot exclude the operation of the statute providing for pre-emption (44 DLR 105).

A Nadabi-patra being merely a deed of disclaimer disclaiming any interest in the properties transferred by an earlier sale deed is not itself a deed of transfer and, therefore, no right of pre-emption can be calimed upon the registration of such a deed of nadabi patra. Simply the fact the document was registered and ad-valorem stamp fee was said on the document by itself can not turn a deed of disclaimer into a deed of transfer (11 DLR 539).

Burden of proof about knowledge of date of transfer.

The burden that the petitioner is to prove in the first instance the circumstances which would prevent the statute from having its ordinary effect remained with him. The petitioner in the present case failed to prove that he had a clear and definite perception of the necessary particulars of the fact of transfer on or after 1.4.63 so as to constitute knowledge of the transfer sought to be pre-empted (29 DLR 1978).

Notwithstanding the fact that a Hindu widow has life interest in the property in question during her life time. She remains a full owner thereof with complete right of acquisition and dispensation subject to law. Such a widow can be safely said to be a co-sharer of any holding or of any property as contemplated under section 96 of the State Acquisition and Tenancy Act (34 DLR 178).

For the purpose of impleading a remaining co-sharer in a proceeding under section 96 of the Act the period of limitation as provided in sub-section (1) of section 96 of the State Acquisition and Tenancy Act in filing an application for pre-emption by pre-emptor against a purchaser for pre-empting the latter's kabala shall not apply (37 DLR 151).

A person seeking pre-emption under section 96(1), if fails to state in his application what is required of under section 90, his application must fail (33 DLR 318).

Prior to allowing a pre-emption application, Court not obliged to record a finding that the applicant is a cultivator and land in the possession does not exceed the prescribed limit of the application is allowed as required under section 90 (33 DLR 134).

After the filing of the application for pre-emption and lapse of statutory period of limitation to pay for rateable pre-emption the co-sharer tenants and other parties concerned become unecessary parties and as such rule cannot be affected for not substituting their heirs (21 DLR 262).

Co-sharer after service of notice on him may either join in the original case for pre-emption or may bring a separate independent case within time limit. Objection as to non-joinder of parties must be taken at the earliest opportunity, failing which the objection will not be entertained (20 DLR 480).

Parties entitled to pre-empt the land sold if fail to exercise their right to pre-empt the land within the given time the right of pre-emption is lost (33 DLR (AD) 113).

Love and affection combined with payment of money. Deed interpreted as hiba-bil-ewaz. Pre-emption cannot be claimed (12 DLR 479).

Transfer by hiba-bil-ewaz price stated in the document not conclusive.

Where a transfer is effected by 'hiba-bil-ewaz' in spite of the value put in the transfer deed by the transferor of the hiba-bil-ewaz' and that for the purpose of registration of the deed the transferee when faced with a pre-emption application by a co-sharer of the

holding is not estopped from proving that the price of the land transferred is higher than what has been stated by the transferor of the deed (19 DLR 194). Transfer in favour of sisters sons, he being a relation by consanguinity within three degrees of the donor, cannot be pre-empted (20 DLR 376).

A nababi patra, not a transfer (11 DLR 376).

Jurisdiction of Court. Subj-section (12) of section 96 is referable to territorial jurisdiction of Court for trial of an action for pre-emption (22 DLR 535).

No appeal lies under the State Acquisition and Tenancy Act against an order dismissing an application under order 9, rule 13 C.P.C. for restoring a proceeding under section 96 of the said Act decreed ex parte (33 DLR 435).

High Court entitled on going through the record of the case, to come to a finding that the petitioner is a bona fide cultivator (33 DLR 135).

Appears lies to the ordinary Civil appelate Court from any order of a Court passed in a pre-emption case under this section. Order passed not disposing of an application for pre-emption on merits is also an order for the purpose (22 DLR 535).

An order referred to in section 96 (13) which is made appealable does not fall within definition of 'decree'.

An order under section 96 although adjudicates a matter finally does not become a 'decree' unless it falls within the definition of 'decree' (29 DLR 308).

97. **Restriction on alienation of land by aboriginals.**- (1) The Government may from time to time, by notification, declare that the provisions of this section shall, in any district or local area, apply to such of the following aboriginal castes or tribes as may be specified in the notification, and that such castes or tribes shall be deemed to be aboriginals for the purposes of this section, and the publication of such notification shall be conclusive evidence that the provisions of this section have been duly applied to such castes or tribes, namely :-

Sonthals, [1][Banais,] Bhuiyas, Bhumijies, Dalus, Caros, Gonds, Hadis, Hajangs, Hos, Kharias, Kharwars, Kocks (Dhaka Division), Koras, Maghs (Bakerganj district), Mal and Sauria Paharias, Maches, Mundas, Mundais, Oraons and Turis.

(2) Except as provided in this section, no transfer by an aboriginal raiyat of his right in his holding or in any portion thereof shall be valid unless it is made to another aboriginal domiciled or permanently residing in [2][Bangladesh] who is a person to whom the transfer of such holding or portion thereof can be made [3][under [4][section 90]].

(3) If in any case an aboriginal raiyat desires to transfer holding or any portion thereof by private sale, gift or will to any person who is not such an aboriginal, he may apply to the Revenue officer for permission in that behalf, and the Revenue officer may pass such order on the application as he thinks fit [5] having regard to the provisions of sections 88 and 90].

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1. The word and comma "Banais," was inserted after the word and ecomma 'Sonthals,' by Act IXI of 1974, s. 3.

2. The words "East Pakistan" was replaced by the word "Bangladesh" by P.O. 48 of 1972.

3. The words and figures "under sections 88 and 90" were subs. for the words and figures "under section 90" by E.P. Ord. XV of 1961, s. 13.

4. The word and figures "section 90" were subs. for the words and figures "sections 88 and 90" by E.P. Act XVII of 1964, s. 7.

5. The words and figures "having regard to the provisions of sections 88 and 90" were inserted by E.P. Ord. XV of 1961, s. 13.

(4) Every transfer referred to in sub-section (3) shall be made by registered deed; and before the deed is registered and the holding or any portion thereof is transerred, the written consent of the Revenue officer shall be obtained to the terms of the deed and to the transfer.

(5) An aboriginal raiyat's power to mortgage his land shall be restricted to only one form of mortgage, namely, a complete usufructuary mortgage 1[:]

1[Provided that nothing in this sub-section shall apply to a mortgage to Government or to the *Agricultural Development Bank of Pakistan or to the ** Agricultural Development Corporation or to a Co-operative Society for obtaining loans for Agricultural purposes.]

(6) An aboriginal raiyat may enter with anothr aboriginal, domiciled or permanently residing in Bangladesh, who is a person with whom a complete usufrucctuary mortgage can be entered into under sub-section (1) of section 95, into a complete usufructuary mortgage in respect of any land comprised within his holding for any period which does not and cannot, in any possible event, by any agreement express or implied, exceed seven years :

Provided that every mortgage so entered into shall be registered under the Registeration Act, 1908.

(7) Any transfer made by an aboriginal raiyat in contravention of the provisions of this section shall be void.

(8) (a) If a transfer of a holding or any portion thereof is made by an aboriginal raiyat in contravention of the provisions of this section, the Revenue officer may, on his own initiative or on application made in that behalf, by an order in writing eject the transferee from such holding or portion :

Provided that the transferee shall be given an opportunity of showing cause against such ejectment before the order is passed.

(b) When the Revenue officer has passed any order under clause (a), he shall either (i) restore the transferred land to the aboriginal or his heir or legal representative or, (ii) failing the transferor or his heir or legal representative, declare that the land has vested in the Government and the Revenue officer may settle the land with another aboriginal.

(9) Notwithstanding anything contained in any other law for the time being inforce, no decree or order shall be passed by any Court for the sale of the right of any aboriginal raiyat in his holding or any portion thereof, nor shall any such right be sold in execution of any decree or order :

Provided that any holding belonging to an aboriginal may be sold, according to the provisions of this Act, in execution of a certificate for the recovery of the arrears of rent of the holding 2[or for recovery of any loan advanced for agricultural purposes by Government or the * Agricultural Development Bank of Pakistan or the 3** * Agricultural Development Corporation or a Co-operative Society to an aboriginal on the security of his holding.]

(10) The Government may, by notification, declare that this section shall, in any district or local area, cease to apply to any caste or tribe to which it may have been applied under sub-section (1).

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1. The colon was subs. for the full stop at the end of sub-section (5) and thereafter the proviso was added by E.P. Ord. VIII of 1967, s. 9.

2. The words within square brackets were added by E.P. Ord. VIII of 1967, s. 9.

3. The words East Pakistan were omitted by P.O. 48 of 1972.

*Sic- Bangladesh Krishi Bank.

*Sic - Bangladesh Agricultural Development Corporation.

CHAPTER XIV

[1][*Provisions as to assessment, enhancement and reduction of rent*]

[2][98. **Revision of rents of raiyats and non-agricultural tenants.**- The rent of a raiyat or non-agricultural tenant shall not be enhanced, reduced or altered except as provided in this Chapter.]

[3][98A. **Assessment or re-assessment of rent in certain cases.**- (1) Notwithstanding anything contained elsewhere in this Act, it shall be lawful for the Deputy Commissioner to assess or re-assess rent on land in the following cases, namely :-

(a) where any land held by a raiyat or non-agricultural tenant has not been assessed to any rent under chapter IV or section 144, nor has any rent been settled in respect of such land under section 107;or

(b) where any land assessed to rent as agricultural land under any of the provisions mentioned in clause (a), is subsequently used for a non-agricultural purpose or vice versa.

(2) In assesing or re-assessing any rent under sub-section (1), the Deputy Commissioner shall have regard to the principles laid down in seection 26 :

Provided that the Deputy Commissioner shall not take action under this section in any area where preparation or revision of record of rights has been undertaken under section 144:

Provided further that no assessment or re-assessment of rent shall be made under this section unless not less than fifteen days notice has been given to the raiyat or tenant concerned to appear and be heard in the matter.

(3) Where only a part of a holding is used for a non-agricultural purpose, such portion shall be constituted into a separate tenancy on the principles laid down in sub-section (3) of section 107 as far as applicable and assessment or re-assessment of rent thereof made under this section..]

99. **Order for determination of rent-rates and preparation of settlement rent roll.**- (1) The Government may make an order directing the Revenue officer -

(a) to determine the rent-rates for any district or part of a district or local areas in accordance with the provisions of this chapter and of such rules as may be made in this behalf by the Government and to prepare in the prescribed form and manner a table of rent-rates in which the rent-rates so determined, together with such other particulars as may be prescribed, shall be specified; and

(b) after the table of rent-rates in respect of any district, part of a district or local area has been prepared and confirmed under this chapter to, settle fair and equitable rents for all tenants in such district or part or area and to prepare in the prescribed form and manner a settlement rent roll in which the rent so settled, together with such other particualrs as may be prescribed, shall be specified.

(2) A notification in the official gazette of an order under this section shall be conclusive evidence that the order has been duly made.

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1. The words within square brackets in Chapter XIV in the heading were subs. for the words "Provisions as to enhancement and reduction of rent" by E.P. Ord. I of 1971, s. 5.
2. Section 98 was subs. for the original section 98 by E.P. Ord. VIII of 1967, s. 10.
3. Section 98A was inserted by E.P. Ord. I of 1971, s. 6.

100. **Procedure in determining rent-rates.**- (1) When an order is made under clause (a) of sub-section (1) of section 99, the Revenue officer shall, for the purpose of determining the rent-rates for the area specified in such order, divide such area into as many suitable units of area as he considers necessary having regard to the conditions of the land and [1][, if such area be agriculturla area,] and the [2]* crops grown in such area, and the Revenue officer shall then determine the rent- rates for different classes of lands in each such unit.

(2) In determing the rent rates [3][for different classes of agricultural land] under sub-section (1), the Revenue officer shall take into consideration -

(a) the nature of the soil and the general productivity of the class of land for which the rent-rate is being determined;

(b) the normal yield per acre of the land to be determined in the prescribed manner;

(c) the average prices of the ccrops grown on such land calculated on the basis of the average prices of such crops prevailing during the preceding twenty years excluding the years in which such prices were abnormal;

(d) any means of irrigation or drainage or any other speecial facilities for cultivation of such land;

(e) the result of any work of agricultural improvement effected within any particular unit at the expense of Government [4][.] [5]*

([4])5* * * * *

(3) The rate of rent per acre for [6][any class of agricultural land] determined under sub-section (1) shall not exceed one tenth of the total value of the produce per acre of such land obtained by multiplying the normal yield per acre of such land, determined in the manner prescribed, by the average price of crops grown in such land referred to in clause (c) of sub-section (4)[7]* * * * * *

[8][(4) In determining the rate of rent for different classes of non-agricultural land under sub-section (1), the Revenue officer shall take into consideration -

(a) the rent generally paid to the Government for non-agricultural land with similar advantages or of a similar description in the vicinity,

(b) the market value of the land or of similar land in the vicinity immediately before the publication of the notification under section 99, to be determined in the prescribed manner,

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1. The commas and the words within square brackets were inserted by E.P. Ord. VIII of 1967, s. 11.
2. The word "Principal" was omitted by E.P. Ord. XV of 1961, S. 14.
3. The words within square brackets were substituted for the words "for different classes of land" by E.P. Ord. VIII of 1967, s. 11.
4. The full stop was substituted for the semi colon by E.P. Ord. XV of 1961, s. 14.
5. The word "and" at the end of clause (c), and clause (f) were omitted, ibid.
6. The words within square brackets were substituted for the words "any class of land" by E.P. Ord. VIII of 1967, s. 11.
7. The words and commas "or five fourths of the existing rate of rent or the average rate of rent, determined in the prescribed manner of such land, whichever is less" were omitted by E.P. Ord. XV of 1961, s. 14.
8. Sub-section (4) and (5) were added by E.P. Ord. VIII of 1967, s. 11.

(c) special conditions and incidents, if any, of the tenancy, and

(d) the result of any work of improvement effected within any particular unit at the expense of Government :

Provided that the rate of rent per acre for any class of non-agricultural land determined under sub-section (1) shall not exceed one fourth per centum of such market value in the case of a residential area and half per centum of such market value in the case of any other area.

(5) The rent generally paid for similar land in the vicinity, as referred to in clause (a) of sub-section (4), shall be calculated by adding up the existing rents of such land in the unit and dividing the sum total by the total area of such unit.

Explanation.- For the purpose of this section "land" does not include any building or structure standing thereon.

101. **Preliminary and final publication of table of rent-rates and its confirmation by the prescribed superior Revenue Authority.**- (1) When the Revenue officer has prepared a table of rent-rates, he shall cause a draft of it to be published in the prescribed manner and for the prescribed period in the area or village to which it relates.

(2) Any person objecting to any entry in the table of rent-rates may present a petition to the Revenue officer within thirty days from the first date of publication under sub-section (1), and the Revenue officer shall consider any such objection and may alter or amend the table.

(3) If no objection is made within the said period or, where objections are made, after they have been disposed of, the Revenue officer shall submit his proceedings to the prescribed Revenue Authority with a full statement of the grounds for his proposals together with all the necessary particulars [1]* * * and the existing rent-rates for each class of land and a summary of the objections (if any) which he has received.

(4) Such superior Revenue Authority may confirm a table submitted under sub-section (3), with or without modification, or may return it for revision.

(5) When a table of rent-rates has been confirmed by such superior Revenue Authority, the order confirming it shall be conclusive evidence that the proceedings for the preparation of the table have been duly conducted in accordance with this Act, and it may be presumed that the rates shown in the table for each class of land are fair and equitable rates payable for land of that class within the area to which the table applies.

102. **Rate shown in the table to be the maximum rate.**- The rate of rent for any class of land shown in a table of rent-rates confirmed under section 101 shall be the maximum rate at which the rent of a raiyat [2][or non-agricultural tenant] for such class of land can be settled.

[3][103. **Particulars to form parts of record of rights.**- The particulars referred to in sub-sections (2) and (4) of section 100 in respect of a unit and the rates of rent determined for different classes of land within such unit under this chapter shall form part of the record of rights of such unit maintained under this part.]

1. The words "relating to the value of the produce per acre of land" were omitted by E.P. Ord. VIII of 1967, s. 12.

2. The words within square brackets were inserted by E.P. Ord. VIII of 1967, s. 13.

3. Section 103 was substituted for the former section 103, ibid, s. 14.

104. **Duration of rent-rates.**- When the rent-rates for any district, part of a district or unit of area have been determined under this chapter and shown in a table or rent-rates confirmed under section 101, they shall not be changed until after a period of [1][twenty] years has elapsed from the date of such confirmation.

105. **Grounds of and limits to enhancement of rent.**- (1) The rent payable by a raiyat [2][or non-agricultural tenant] in respect of any land shall be liable to enhancement on the ground that the rent payable by him is substantially lower than the rent calculated at the rates of rent determined under this chapter for similar classes of land in the unit in which the land is situated and entered in the table of rent-rates, confirmed under section 101, applicable to such unit.

[3][(2) In all cases where the increase of rent exceeds fifty per centum of the rent payable during the immediately preceding year, the Revenue officer shall, and in any other cases where he considers that an immediate increase of rent will cause hardship, he may direct that the enhancement shall take effect by yearly increments over a number of years as he may fix in this behalf :

Provided that the increase of rent in a particular year shall not exceed fifty per centum of the rent payable during the yar immediately preceding the year from which the new assessment takes effect under section 113.]

106. **Grounds for reduction of rent.**- The rent payable by a raiyat in respect of a holding may be reduced on one or more of the following grounds, namely :-

(a) that the rent payable by the raiyat is substantially higher than the rent calculated at the rates of rent determined under this chapter for similar classes of land in the unit in which the land comprised in the holding is situated and entered in the table of rent-rates, confirmed under section 101, applicable to such unit;

(b) that the soil of the holding has deteriorated as a result of the deposit of sand or through the operation of other natural causes, sudden or gradual; and

(c) that there has been any breakdown of the existing arrangements for irrigation or drainage or for the maintenance of any embankments or bunds which were in existence at the time when the rent was last settled, and the soil of the holding has thereby deteriorated.

[4][106A. **Grounds for reduction of rent.**- The rent payable by a non-agricultural tenant in respect of any tenancy may be reduced on the ground that the rent payable by him is substantially higher than the rent calculated at the rates of rent determined under this chapter for similar classes of land in the unit in which the land comprised in the tenancy is situated and entered in the table of rent-rates, confirmed under section 101, applicable to such unit.]

107. **Settlement of fair and equitable rents.**- (1) After a table of rent-rates has been prepared and confirmed under this chapter, the Revenue officer shall proceed to settle, according to the provisions of the preceding sections, the fair and equitable rents of all tenants in the area to which the table of rent-rates applies and to prepare the settlement rent roll as directed under clause (b) of sub-section (1) of section 99.

1. The word "twenty" was substituted for the word "thirty" by E.P. Ord. XV of 1961, s. 16.
2. The words within square brackets were inserted by E.P. Ord. VIII of 1967, s. 15.
3. Sub-section (2) was subs. for the original sub-section (2) by E.P. Ord. XV of 1961, s. 17.
4. Section 106A was inserted by E.P. Ord. VIII of 1967, s. 16.

(2) For the purpose of settling such fair and equitable rents and preparing the settlement rent roll, the Revenue officer shall be guided by the rent-rates entered in the table of rent-rates so prepared and confirmed :

Provided that a Revenue officer shall not be bound to apply the said rates to any particular case or area if he considers, for reasons to be recorded in writing, that the application of such rates to such case or area would be unfair or inequitable.

[1][(3) Where any non-agricultural land is comprised in a tenancy which includes land other than non-agricultural land or when the classification of land has partly changed from agricultural to non-agricultural, the Revenue officer shall,-

(i) divide the tenancy so as to constitute separate tenancies for the non-agricuclturaI land and the agricultural land,

(ii) apportion the existing rent between the tenancies so constituted,

(iii) estimate fair and equitable rents for the agricultural and non-agricultural land in accordance with the provisions of this chapter, and

(iv) make such consequential changes in the record of rights as may be necessary.]

108. (1) When a settlement rent roll has been prepared, the Revenue Officer shall cause a draft of it to be published in the prescribed manner and for the prescribed period and shall receive and consider any objection made to an entry therein or omission therefrom during the period of publication and shall dispose of such objections according to such rules as the Government may make.

(2) The Revenue officer may, of his own motion or on application of any party aggrieved, at any time before a settlement rent roll is submitted to the confirming authority under section 108, revise any rent entered therein :

Provided that no such entries shall be revised until reasonable notice has been given to the tenant concerned to appear and be heard in the matter.

109. **Sanctioning final public of the settlement rent roll and in corporation of the same in the record of rights.**- (1) When all objections have been disposed of under section 108, the Revenue officer shall submit the settlement rent roll to the prescribed comfirming authority with a full statement of the grounds for his propoals and a summary of the objections (if any) which he has received.

(2) The confirming authority may sanction the settlement rent roll with or without amendment or may return it for revision :

Provided that no entry shall be amended or omission supplied until reasonable notice has been given to the tenant concerned to appear and be heard in the matter.

(3) After sanction by the confirming authority the Revenue officer shall finally frame the settlement rent roll and publish it in such manner as may be prescribed and shall incorporate it in the record of rights for the area, to which such settlement rent roll relates, maintained under this part: and such publication shall be conclusive evidence that the settlement rent roll has been duly made under this chapter.

110. **Appeal to and revision by superior Revenue Authority.**- (1) An appeal, if presented within two months from the date of the order apealed against, shall lie from every order passed by a Revenue officer on any objection made under section 108, or from an order passed by the confirming authority under section 109 to the prescribed superior Revenue Authority.

1. Sub-section (3) was added by E.P. Ord. VIII of 1976, s. 17.

(2) The [1][Board of Land Administration] may in any case under this chapter, on application or of its own motion, direct the revision of any settlement rent roll or any portion of it at any time within six months of the date of the order sanctioning the settlement rent roll under sub-section (2) of section 109 or any order passed by the superior Revenue Authority under sub-section (1), whichever is later, but not so as to affect any order passed by the Special Judge under section 111 :

Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

111. **Appeal to the Special Judge.**- (1) Any person aggrieved by an order passed by the Revenue officer on any objection made under section 108 or an order passed by the confirming authority under section 109, may present an appeal in the prescribed manner against such order, within three months of the final publication under sub-section (3) of section 109 of the settlement rent roll to which such appeal relates, to the Special Judge appointed by the Government in this behalf provided that no appeal has been presented regarding the matter to the prescribed superior Revenue Authority under sub-section (1) of section 110.

(2) Subject to such orders as may be passed by [1][the High Court in its revisional jurisdiction, the order of the Special Judge, on the Appeal, shall be final; and no appeal shall lie to the High Court against the order of the Special Judge under this section.

(3) The provisions of the Code of Civil Procedure, 1908, shall, so far as it may be, apply to all appeals presented to the Special Judge under this section

[2][111A. **Correction of Mistakes and making alteration in rent roll.**- The Revenue officer, may, at any time before final publication under sub-section (3) of section 109, correct any clerical mistake in the settlement rent roll, and shall make such alteration in the same as may be necessary to give effect to any order passed under sections 110 and 111.]

112. **Presumption to rents settled under this chapter.**- All rents settled under this Chapter shall be deemed to have been correctly settled and to be fair and equitable rents.

113. **Date from which settlement takes effect.**- When a rent is settled by a Revenue officer under this chapter in respect of any area, it shall, subject to sections 110 and 111, take effect from the beginning of the agricultural year next after the date of the final publication under sub-section (3) of section 109 of the settlement rent-roll in which such rent is specified.

114. **Period for which rent as settled is to remain unaltered.**- When the rent of a tenant has been settled under this chapter, it shall not be enhanced for a period of [3][twenty] years; and no such rent shall be reduced within the said period save on the ground specified in clause (b) or clause (c) of section 106.

115. **Bar to jurisdiction of Civil Court.**- No suit or other legal proceeding shall be instituted in any Civil Court in respect of the determination of rent-rates or the settlement of any rent or the omission to determine any rent-rate or to settle any rent under this chapter, except as provided in section 111.

1. The words "Board of Land Administration" were subs. for the word "Government" by Ord. XLI of 1982, Sch.

2. Section 111A was inserted by E.P. Ord. VIII of 1967, s. 18.

3. The word "twenty" was subs. for the word "thirty" by E.P. Ord. XV of 1969, s. 18.

CHAPTER XV

Amalgmation, Subdivision and Consolidation of holdings

116. **Amalgamation of holding of a tenant in the same village.**- Where various parcels of land are held by one tenant within one village, and such parcels of land or some of them are the subject to separate tenancies, such parcels of land shall, under the orders of the Revenue officer, be amalgamated into one tenancy 2[.]

1• • • • •

[2][117. **Subdivision of holding and restriction thereon.**- [3][(1) Notwithstanding anything contained elsewhere in this part, the Revenue officer may,-

(a) for the purpose of amalgamation of tenancies under section 116, either on his own motion or on an application made to him by one or more co-sharer tenants, in that behalf, or

(b) for the purpose of consolidation of holdings of a malik, under section 119, either on his own motion or on an application made to him, in that behalf, or

(c) for the purpose of subdivision of a joint tenancy for distribution of rent thereof, on an application made to him by one or more co-sharer tenants.

direct, by order in writing, such subdivision of a joint tenancy amongst the co-sharer tenants and distribution of rent thereof, including arrears of rent, if any, as he may consider fair and equitable :

Provided that no such order shall be passed unless reasonable notice is given to the parties concerned to appear and be heard in the matter :

Provided further that where an order under clause (c) is passed, and distribution of rent, by reason thereof, results in bringing the rent of a portion of the tenancy below •rupee one, a fraction of rupee one shall be rounded off into rupee one.

4• • • •

(3) When an order under sub-section (1) has been passed subdividion a joint holding, such subdivision may be demarcated on the ground and also shown on the cadastral survey map.]

5• • • •

Comments

With the subdivision of the original jama the original co-sharers are no longer co-sharers of the jama and hence they cannot apply for pre-emption (39 DLR 76; 26 DLR 59(AD); 18 DLR 281).

1. The full stop was subs. for the colon and the proviso thereto was omitted by E.P. Ord. XXI of 1969, s. 6.

2. Section 117 was subs. for the former section 117 by E.P. Act VI of 1964, s. 5.

3. Sub-section (1) was subs. for the former sub-section (1) by E.P. Ord. VIII of 1967, s. 19.

4. Sub-section (2) was deleted by E.P. Ord. VIII of 1967, s. 19.

5. Section 118 was omitted by E.P. Act VI of 1964, s. 6.

•Sic- Read Taka.

When a valid order under section 117 of the S.A.T. Act is on record, and the order has been given effect to, the Civil Court is not competent to ignorance the order on the ground of finding some irregularity in the same as a Court of appeal, while dealing with the application under section 96 of the S.A.T. Act for preemption (33 DLR (AD) 309; affirmed in 35 DLR (AD) 338, and 39 DLR (AD) 76).

Mutation proceeding initiated after the filing of the pre-emption application is hit by the doctrine of lis pendens (39 DLR (AD) 76).

In case of amalgation, consolidation and sub-division of a tenancy prior notice must be served on the parties concerned (35 DLR (AD) 388).

Sub-division of a holding effect after giving reasonable notice to the parties concerned to appear and be heard is complete. No pre-emption can be claimed after sub-division under section 17 (33 DLR 318).

In a mutation case for split up of a jama notice of the mutation case not having been served on the co-sharers and mutation having been effected behind their back, in law that is not valid splitting up of the jama and as such the co-sharers have not lost their right of pre-emption under section 24 of Act XXIII of 1949 (33 DLR (AD) 323).

Order (affecting a sub-division of a holding) validly made by a competent authority and has been given effect to and further there has been no appeal against the order made under section 117 the order remains a validly legal order and a Court of appeal while dealing with a matter under section 96 for pre-emption cannot ignore the order (33 DLR (AD) 309).

There is presumption under the law that all officials Acts are presumed to have been rightly and regularly done (35 DLR (AD) 346 (Para 8).

Section 117 (a) (b) (c) : Provisions made for amalgamation, consolidation or sub-division of holding. Amalgamation or consolidation by revenue officer on his own motion or on application. Sub-division can be effected only on application by co-sharer tenants (36 DLR 193).

Sub-division of a joint tenancy can only be effected on the application of co-sharers and by the R.O. on his own motion..... Notice on other co-sharer compulsory (35 DLR (AD) 338).

The terms separation is not a legal term and not used in section 116 or 117, but nevertheless it denotes, in general sense, separation of share from a joint tenancy, and as such separation necessarily means sub-division of a joint tenancy and falls under, and is governed by clause (c) of section 117 (35 DLR (AD) 338).

Effect of separation of a share from the joint holding falls upon all co-sharers of the original holding. A co-sharer after getting his share separated may get his portion constituted into a new tenancy or he may tag his share with his other land, if any, and if he does so, his case may be referred to as a case of separation and amalgamation for the sake of convenience, though the two terms are quite different. His former co-sharers are not interested in such amalgation (35 DLR (AD) 338).

Co-sharers amicably splitting up their jama for facilitating payment of land revenue. A conclusion can be arrived at that the co-sharers have effected an amicable partition. In which case provision of section 96 of State Acquition and Tenancy Act cannot be invoked (36 DLR 193).

119. **Persons entitled to apply for consolidation of holding.**- (1) Any two or more raiyats having lands in the same or contiguous villages may apply in the prescribed form to the Revenue officer for consolidation of their holdings and submit along with such application a scheme for such consolidation.

(2) If not less than two thirds of the raiyats in a village or a block of villages, which form one contiguous area, holding not less than three fourths of the total cultivable area in such village or block of villages, make an application under sub-section (1) for consolidation of their holdings, such application shall be deemed to be an application on behalf of all the raiyats of such villages or block of villages.

120. **Admission of application.**- (1) On receipt of any application for consolidation under section 119, the Revenue officer shall enquire into such application in the prescribed manner and shall, if he considers after such enquiry that there are good and sufficient reasons for rejecting such application or excluding any of such land from consolidation, submit the application to the prscribed superior Revenue Authority with a recommendation that the application be rejected, or disallowed in a part, specifying his reason therefor; and on receipt of such recommendation, such superior Revenue Authority shall pass such orders thereon as he thinks proper.

(19) If the Revenue-officer does not make any recommendation under sub-section (1), or if such superior Revenue Authority, on receipt of the recommendation of the Revenue officer, makes an order directing the Revenue officer to admit the application in whole or in part, the Revenue officer shall admit such application either in whole or in part, as the case may be, and shall deal with it in accordance with the provisions of this Chapter and of any rules made by the Government under this Act.

121. **Confirmation of agreed schemes for consolidation.**- When a scheme for the consolidation of holding is submitted along with an application under sub-section (1) of section 119, and such scheme, including any stipulation for payment of any compensation by one party to another contained in such scheme, has been agreed to by all the raiyats affected by it, the Revenue officer shall, after admitting the application either in whole or in part under section 120, examine such scheme and may, after such examination, either confirm the scheme with or without modification or may return it for revision and may confirm it after such revision :

Provided that the Revenue Officer shall not confirm the scheme if the sum total of the rent of all holdings under the scheme has been reduced by the distribution of the rent consequent on redistribution of lands.

122. **Preparation of a scheme for consolidation and appointment of Advisory Committee.**- [1][(1) In the following cases, namely,-

(i) where no scheme for the consolidation of holding is submitted along with the application under sub-section (1) of section 119, or where any such scheme has been submitted with such application but has not been agreed to by all the raiyats affected by it, or

(ii) where an application has been made under sub-section (2) of that section, or

(iii) where the Government by notification make an order directing that consolidation of holdings be affected in any area and the raiyats of such area fail to produce an agreed scheme under sub-section (la).

1. Sub-section (1) was subs. for the original sub-section (1) by E.P. Ord. XV of 1961, s. 21.

the Revenue officer shall prepare a scheme for the consolidation of holdings of such applications or of each raiyat at in such villages or area, as the case may be; and every such scheme shall be prepared in accordance with the provisions of the Act and of such rules as may be made by the Government in this behalf.]

[1][(1a) Upon the publication of a notification under clause (iii) of sub-section (1), the Revenue officer shall call upon the raiyats of the area, to which such notification relates, to produce, within a time to be fixed y him which may be extended by him, if necessary, an agreed scheme of consolidation of holding.]

(2) For the purpose of asisting him in the preparation of a scheme for consolidation of holdings under sub-section (1) in any local area [2]or for the purpose of securing an agreed scheme for cnsolidation of holdings in respect of any area under sub-section (1a), the Revenue officer may, subject to such rules as may be made by the Government in this behalf, appoint an Advisory Committee in respect of such area [3]and may provide such advisory Committee with such technical assistance as he may consider necessary].

[4][(2a) When an agreed scheme is produced under sub-section (1a), the Revenue officer shall deal with such scheme in the same manner as provided in section 121.]

(3) In preparing a scheme for the consolidation of holdings under sub-section (1), the Revenue officer shall have due regard to any proposal with regard to the consolidation which has the largest measure of agreement amongst the parties, affected by it, and in making the redistribution of lands for the purpose of the consolidation, he shall see that the total area of a holding or the profit to be derived therefrom is affected as little as possible.

(4) If in preparing a scheme for the consolidation of holdings under sub-section (1), it appears to the Revenue officer that the redistribution of lands will result in allotment to any raiyat of any parcel of land of market value lower than the market value of his original parcel of land, the Revenue officer shall in the scheme provide for the payment of compensation to such raiyat by the raiyat or raiyats who, in the opinion of the Revenue officer, will be benefitted by the allotment of the more valuable land of the first named raiyat.

[5][(5) In preparing a scheme for the consolidation of holdings under sub-section (1), the Revenue officer shall, in any case where the land is of such a kind that the productivity of different areas may vary from year to year, give due consideration to this fact and shall attempt to preserve the balanced character of the holdings, as far as possible, and where the plots of land exist a different levels, he may consolidate the holdings in two or more blocks each at a different level.

(6) Before confirming a scheme for the consolidation of holdings in any area under section 121 or section 123, the Revenue officer shall ascertain, as far as possible, all encumbrances, including mortgages, attached to the land situated within such area and shall issue a notice in the prescribed manner calling upon all beneficiaries of enccumbrances to declare their interests within a date to be fixed in that behalf and it

1. Sub-section (1a) was inserted by E.P. Ord. XV of 1961, s. 21.
2. The words, brackets, figure and letter within square brackets were inserted, ibid.
3. The words within square brackets were inserted, ibid.
4. Sub-section (2a) was inserted, ibid.
5. Sub-sections (5), (6),(7), (8) and (9) were inserted after sub-section (4) by E.P. Ord. XV of 1961, s. 21.

shall then be incumbent on the persons, in whose favour such encumbrances have been created, to declare the encumbrances before the Revenue officer within the period fixed in such notice and if any such person fails to declare such encumbrances within the said period, the encumbrances shall cease to be attached to any part of the land originally encumbered that has not remained with its owner after consolidation.

(7) In preparing a scheme for the consolidation of holdings under sub-section (1), the Revenue officer shall see that the sum total of the rent of all holdings under the scheme is not reduced by the distribution of the rent consequent on redistribution of the lands.

(8) In conducting any proceedings for the consolidation of holdings in any case where the value of a holding is materially changed, the Revenue officer shall simultaneously apportion the rent in such a way that the incidence upon the owners of holdings bears the same proportion to the value of each holding as it did before.

(9) Each consolidated holding shall bear one single rent.]

123. **Draft publication of the scheme and hearing of objections.**- (1) When a scheme for consolidation of holdings has been prepared, the Revenue officer shall cause a draft of the scheme to be published in the prescribed manner and for the prescribed period and shall receive and consider any objections made in regard to any entry therein or omission therefrom during the period of publication and shall dispose of such objections according to such rules as the Government may make in this behalf.

[1](2) If no objection is made within the said period or, where objections are made, such objections are disposed of, the Revenue officer shall pass an order confirming the scheme with or without modification.]

[2]* * * *

124. **Appeal.**- (1) Any person aggrieved by an order of the Revenue officer confirming a scheme under section 121 or under sub-section (2) [3]* * * of section 123 may, within the period prescribed in this behalf, prefer an appeal in the prescribed manner to the prescribed Superior Revenue Authority and the decision of the said Superior Authority on such appeal shall, subject to the provisions of sub-section (2), be final.

(2) A second appeal, if presented in the prescribed manner and within the period prescribed in this behalf, shall lie from every order passed on appeal under sub-section (1) by such Superior Revenue Authority to the [4][Board of Land Administration].

125. **Final confirmation of the scheme.**- When the time within which appeals may be made under sub-section (1) of section 124 has expired and, if any such appeal has been made, when the time within which the second appeal may be made under sub-section (2) of that section has also expired, and all appeals made under sub-sections (1) and (2) of that section have been disposed of, and no order rejecting the scheme has been finally passed on such appeals, the Revenue officer shall, if necessary, modify the scheme to give effect to any orders passed on appeal under the said section, if any, and shall thereafter record an order finally confirming the scheme.

1. Sub-section (2) was subs. for the original sub-section (2) by E.P. Ord. XV of 1961, s. 22.
2. Sub-section (3) was omitted, ibid.
3. The words brackets and figure "or sub-section (3)" were omitted, ibid, s. 23.
4. The words "Board of Land Administration" were subs. for the word "Government" by Ord. XLI of 1982, sch.

126. **Modification of the village record of rights on confirmation of the scheme and the date from which the scheme takes effect.**- (1) Upon the final confirmation of a scheme for consolfdation of holdings under section 125, the Revenue Officer shall cause the record of rights, maintained under this part, to the village or villages to which such scheme relates, to be modified in accordance with the scheme as finally confirmed; and every tenant affected by such scheme shall be entitled to obtain free of cost from the Revenue officer a copy of the record of rights, so modified, containing the entries as relating to him.

(2) When a scheme for the consolidation of holdings has been finally confirmed under section 125, it shall take effect from the beginning of the agricultural year next after the date of the final confirmation of such scheme.

127. **Demarcation of the boundaries of holdings.**- As soon as may be after a scheme for the consolidation of holdings takes effect, the Revenue officer shall depute a surveyor or a amin to demarcate the boundaries of the holdings affected by the scheme or to take such other steps for the identification on the spot of the land included in the holdings so affected as the Revenue officer may approve.

128. **Effect of final confirmation of scheme for consolidation and the rights of raiyats thereunder.**- [1][(1) On the final confirmation of a scheme under section 125, it shall be binding on all the raiyats to which such scheme relates.]

[2]* * * * *

(3) Every raiyat affected by any scheme for the consolidation of holdings finally confirmed under section 125 shall be entitled to the possession of the holdings allotted to him under the scheme with effect from the date on which the scheme takes effect; and the Revenue officer may, on application made in this behalf by such raiyat, cause such steps to be taken as he may consider necessary for putting such raiyat in possession of the holding so allotted to him.

(4) A raiyat shall have the same right in the holding allotted to him under a scheme for the consolidation of holdings finally confirmed under section 125 as he had in his original holding before such consolidation.

129. **Encumbrances on land included in the scheme for consolidation.**- (1) Notwithstanding anything contained in any other law for the time being in force or in any contract, if the holding of a raiyat comprised within a scheme for the consolidation of holdings finally confirmed under section 125 is, immediately before the date on which such scheme takes effect, subject to any mortgage or other encumbrance, such mortgage or other encumbrance shall, with effect from such date, be deemed to be transferred and attached to the holding created and allotted to such raiyat under the said scheme or to such part of such holding as may be specified in the scheme by the Revenue officer; and thereupon the mortgagee or other encumbrancer, as the case may be, shall cease to have any right in or against the land from which the mortgage or other encumbrance has been transferred and shall continue to have the same rights in or against the holding so allotted such part thereof as he had in or against the original land from which the mortgage encumbrance had been transferred.

Notwithstanding anything contained in sub-section (3) of section 128 the Revenue application made in this behalf by any mortgagee or other encumbrancer

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[1] Substituted for the original sub-section (1) by U.P. Ord. XV of 1961, s. 24.

[2] Omitted, ibid.

entitled to possession of any holding or part thereof to which his mortgage or other encumbrance has been transferred under sub-section (1), cause such steps to be taken as he may consider necessary for putting such mortgagee or other encumbranccer in possession of such holding or part thereof.

130. **No instrument necessary to effect transfer.**- Notwithstanding anything contained in any other law for the time being in force, no instrument in writing shall be necessary in order to give effect to transfer involved in carrying out any scheme for consolidation of holdings.

[1][131.- **Transfer of holding during the pendency of the procedings for consolidation.**- (1) During the pendency of any proceedings under this Chapter, no person shall transfer any land to which such proceedings relate, without the previous permission of the Revenue officer and where any such land is transferred with such permission, the transferee shall be deemed to be a party to such proceedings and shall be substituted in place of the transferor of the land.

(2) On and from the date of final confirmation of a scheme for consolidation of holdings under section 125, no co-sharer shall acquire by continued possession any title in a part of the holding to the exclusion of the other co-sharers.]

132. **Recovery of the cost of consolidation proceedings.**- (1) The costs of proceedings of the consolidation of holdings under this chapter shall, on the final confirmation under section 125 of the scheme for such consolidation, be assessed in the prescribed manner and be, subject to such rules as may be made by the Government in this behalf, recovered from the raiyats whose holdings are affected by such scheme :

Provided that no costs shall be recoverable in respect of any proceedings arising out of an application under sub-section (1) of section 119 where the applicants have submitted an agreed scheme for consolidation of their holdings 2[or in respect of any proceedings arising out of an agreed scheme produced under sub-section (1a) of section 122.]

(2) The portion of the aforesaid costs which any raiyats is liable to pay shall be recoverable by the Government as an arrear of rent due in respect of the holding of the raiyats affected by the said scheme.

133. **Recovery of compensation as arrears of public demand.**- Any amount specified in any scheme finally confirmed under section 125 as payable as compensation shall be recoverable as an arrear of public demand.

134. **Bar to jurisdiction of Civil Courts.**- No Civil Court shall entertain any application of suit concerning any matter relating to consolidation of holdings of raiyats dealt with in this chapter.

[3][134A. **Special provision for the district of Dinajpur.**- Notwithstanding anything contained in the foregoing sections of this chapter, the scheme for consolidation of holdings executed in the areas under the police stations of Debiganj and Boda in the district of Dinajpur under the provisions of this chapter shall be deemed to be void ab-initio and the rights and interests of the tenants existing in the lands comprised in that scheme immediately before such consolidation shall remain unaffect, as if such consolidation were never made.]

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1. Section 131 was subs. for the original section 131 by E.P. Ord. XV of 1961, s. 25.
2. The words, brackets, figures and letter were added after the words "consolidation of their holdings" by E.P. Ord. XV of 1961, s. 26.
3. Section 134A was inserted by E.P. Act. XVII of 1964, section 8.

CHAPTER XVI

Provisions as to rent and realisation of rent

135. **Instalment of rent.**- (1) Subject to agreement or establishment usage, the rent payable by a raiyat shall be paid in two equal instalments falling due on such dates as may be prescribed.

(2) Subject to agreement, the rent payable by a non-agricultural tenant shall be paid in one annual instalment falling due on the last day of the agricultural year.

136. **Time and place for payment of rent.**- (1) Every raiyat shall pay or tender each instalment of rent and every non-agricultural tenant shall pay or tender the rent before sunset of the day on which it falls due :

Provided that the raiyat or the non-agricultural tenant may pay or tender the rent payable for the year at any time during the year before it falls due.

(2) The payment or tender of rent may be made -

(a) at the village tahsil office or at such other convenient place as may be appointed in that behalf by the collector; or

(b) by postal money order in the manner prescribed.

(3) When rent is sent by postal money order in the prescribed manner it shall be presumed, until the contrary is proved, that a tender has been made

(4) When rent sent by postal money order is accepted; the fact of this acceptance shall not be used in any way as evidence of the correctness of any of he particualrs setforth in the postal money order form.

(5) Any rent or any instalment or part of an instalment of rent not duly paid at or before the time when it falls due shall be deemed to be an arrear.

[1][137. **Appropriation of payments.**- (1) When a raiyat or a non-agricultural tenant makes a payment on account of rent, he may declare the year or years and the instalment or instalments in respect of which he wishes the payment to be credited, and the payment shall be credited accordingly.

(2) If he does not make any such declaration, the payment shall be credited towards the arrears, if any, and the balance, if any, after the arrears have been satisfied, and where there is no arrear, the whole amount, shall be credited as the rent of the current year.]

138. **Raiyat making payment of his rent entitled to receipt.**- Every raiyat or non-agricultural tenant who makes a payment on account of rent shall be entitled to obtain forthwith, from the person authorised in writing by the ccollector to receive such rent, a written receipt in the prescribed form for the amount paid by him signed by the person so authorised.

139. **Liability of holding to sale for arrears.**- The holding of a raiyat or the tenancy of a non-agricultural tenant shall be liable to sale in execution of a certificate signed under the Bengal Public Demands Recovery Act, 1913, for the rent thereof, and the rent shall be a first charge thereon.

140. **Interest on arrears.**- An arrear of rent shall bear simple interest at the rate of six and a quarter per centum per annum from the expiry of the year in which the rent or instalments of rent, as the case may be, fall due to the date of payment or of the filing of

1. Section 137 was substituted, for the former section 137 by E.P. Ord. XXI of 1969, s. 7.

the certificate under the Bengal Public Demands Recovery Act, 1913, whichever date is earlier.

141. Realisation of arrears of rent under the Bengal Public Demands Recovery Act, 1913.- All arrears of rent shall be recoverable under the Bengal Public Demands Recovery Act, 1913, subject to such rules as may be made in this behalf by the Government and not otherwise [1][:]

[1][Provided that a certificate signed under the said Act for arrears of rent shall not be executed by arresting the certificate debtor and detaining him in the Civil prison.]

[2][**141A. Amounts paid into Court to prevent sale to be a mortgage demand in certain cases.**- (1) When a co-sharer tenant, whose interests are affected by the sale of a holding or tenancy advertised for sale in execution of a certificate for arrears of rent due in respect thereof signed under the Bengal Public Demand s Recovery Act, 1913, pays into the Court, the amount requisite to prevent the sale -

(a) the amount so paid by him shall be deemed to be a debt bearing interest at six and a quarter per centum per annum and secured by a mortgage of such holding or tenancy to him; and

(b) his mortgage shall take priority over every other charge on such holding or tenancy other than a charge for arrears of rent.

(2) Nothing in this section shall affect any other remedy to which such co-sharer tenant would be entitled.]

142. **Limitation.**- The period of limitation for the recovery of an arrear of rent shall be three years running from the last day of the year in which the arrear fell due.

CHAPTER XVII

Maintenance and revision of the record of rights

143. Maintenance of the record of rights.- The collector shall maintain up-to-date, in the prescribed manner, the record of rights prepared or revised under Part IV [3][or under this Part] [4]*** * * [5][by correcting [6][7]*[7][clerical] [7]*] mistakes and] by incorporating therein the changes on account of -

(c) the new settlement of lands or of holdings purchased by the Government; and

(d) the abatement of rent on account of abandonment or diluvion or acquisition of land.

[8]* * * * *

1. The colon was subs. for the full stop at the end of section 141 and thereafter the proviso was added by E.P. Ord. XXI of 1969, s. 8.

2. Section 141A was inserted by E.P. Ord. VII of 1967, s. 20.

3. The words "or under this part" were inserted, ibid, s. 21.

4. The words and figures "and modified under section 46" were omitted by E.P. Ord. XV of 1961, s. 27.

5. The words "by correcting bona fide mistakes and" were inserted by E.P. Ord. XLIV of 1958, s. 21.

6. The comma was inserted after the word "correcting" and words and comma "in the prescribed manner," were subs. for the word "bona fide" by E.P. Act XVII of 1964, s. 9.

7. The commas after the words "correcting" and "manner" were omitted and the word "clerical" was subs. for the words "in the prescribed manner" by E.P. Ord. VIII of 1967, s. 21.

8. Section 143A was omitted by Ord. XLIV of 1975, s. 2, which was inserted by E.P. Ord. VIII of 1976, s. 22.

Comments

Section 143 of the State Acquisition and Tenancy Act provides, inter alia, that the record of rights prepared or revised shall be maintained upto date in the prescribed manner under Part IV , or under chapter XVII by correcting clerical mistakes and by incorporating the changes on account of (a) the mutation of names as a result of transfer or inheritance (38 DLR 270).

Revenue officers : His function is not judicial function but he is concerned with mutation of names. On report from the tahsilder, Revenue officer incorporates necessary changes in record of right. If necessary he can make enquiry in to correctness of what is reported to him. If necessary he may take evidence, but thereby he does not become a Court (38 DLR 270).

Section 143A is only concerned with the question of possession of the land. Question of title to the land is beyond the scope of this section (37 DLR 202).

Record of rights prepared on the basis of possession. High Court Division cannot interfere with lower Court's decisions on grounds which cannot be considered in a case under section 143A (ibid).

Section 143 of the State Acquisition and Tenancy Act provides, inter alia, that the record of rights prepared or revised shall be maintained upto date in the prescribed manner under part IV, or under chapter XVII by correcting clericial mistakes and by incorporating the changes on account of the mutation of names as a result of transfer or inheritance (38 DLR 270).

The decision of the Board of Land Administration travelled beyond its jurisdiction in deciding matters not within its jurisdiction under section 143 of the State Acquisition and Tenancy Act (41 DLR 2700.

An application under section 143A of the State Acquisition and Tenancy Act is not a suit for declaration of title but is a proceeding for rectification of mistakes in the record of right prepared on the basis of possession in the land in question. The scheme of the section shows the possession is the material question. This was a special provision and this section was inserted after section 14 by E.P. Ordinance VIII of 1965. It was however, ovitted after a few years by ordinance No. LXIV of 1975.

Within the scope of section 143A, there is hardly any ground for the custodian of the enemy property appellant to challenge the title of the plaintiff. The learned Judge found that the custodian of enemy property had no document in his possession to claim the property as enemy property. Before the High Court Division no one appeared on behalf of the present custodian. The learned judge of the High Court Division having found the plaintiffs *prima facie* title and clear possession of the case land, rightly reversed the decision of the lower appellate Court and restored that of the trial Court (36 DLR (AD) 79).

Section 143A is only concerned with the question of possession of the land. Question of title to the land is beyond the scope of this section (37 DLR (AD) 202).

Section 143 of the Act is attracted only when a clerical mistake is to be corrected or, inter alia, the mutation of names as a result of transfer or inheritance is necessary. It is not attracted when the record of rights is to be corrected after a finding is to be given as to the title of the holders or the challengers. The examination of title deeds for purposes of determining title of the holder of record of rights is not permitted under section 143. The word transfer referred to in clause (a) of section 143 is limited to transfer by the

recorded tenant, not by other persons. The respondent Nos. 4-5 applied for mutation not because the recorded tenant transferred the lands to them, but because some persons, unconnected with the record of rights, transferred the lands. Clause (a) of section 143 is not attracted under these circumstances (41 DLR 364).

It is well established that a determination that is erroneous in law can be set aside if the error goes to jurisdiction or if the error is apparent on the face of law involved in this case and has decided matters which are not within its jurisdiction to decide under section 143. We are of the opinion that under such circumstances the decision of the Baord of Land Administration is liable to interference by this Court (41 DLR 364).

See also chapter XV of Land Administration Manual

144. Revision of the record of rights.- (1) The Government may in any case if it thinks fit make an order directing that a record of rights in respect of any district, part of a district or local area be [1][prepared or revised] by a Revenue officer in accordance with such rules as may be made by the Government in this behalf.

(2) In particular, and without prejudice to the generality of the foregoing power, the Government may make such order in any of the following cases, namely :-

(a) where not les than one-half of the total number of tenants applies for such an order;

(b) where the [2][preparation or revision] of such a record is calculated to settle or avert a serious dispute existing or likely to arise amongst the tenants; and

(c) where a settlement of rent is being or about to be made in respect of any district part of a district or local area.

[3][(3) A notification in the official gazette of an order under sub-section (1) shall be conclusive evidence that the order has been duly made.

(4) When an order is made under sub-section (1), the Revenue officer shall record in the record of rights to be prepared or revised in pursuance of such order such particulars as may be prescribed.

[4][(4A)(i) Notwithstanding anything contained elsewhere in this Act, the Revenue officer shall also assess or re-assess rent on land in the following cases, namely :-

(a) where any land held by a raiyat or non-agricultural tenant has not been assessed to any rent under chapter IV or section 98A, nor has any rent been settled in respect of such land under section 107; or

(b) where any land assessed to rent as agricultural land under any of the provisions mentioned in clause (a), is subsequently used for a non-agricultural purpose or vice versa.

In assessing or re-assessing any rent under this sub-section, the Revenue officer shall have regard to the principles laid down in section 26.

(ii) Where only a part of a holding is used for non-agricultural purpose, the Revenue officer shall take action on the principles laid down in sub section (3) of section 98A.]

1. The words "prepared or revised" were substituted for the word "revised" by E.P. Ord. VIII of 1967, s. 23.

2. The words "Preparation or revision" were substituted for the word "revision", ibid.

3. Sub-seections (3) to (8) were added, ibid.

4. Sub-section (4A) was added by E.P. Ord. I of 1971, section 7(1).

(5) When a record of rights has been prepared or revised so as to contain or include therein the particulars referred to in sub-section (4) [1][and the rents assessed or re-assed under sub-section (4A)], the Revenue officer shall publish a draft of the record of rights so prepared or revised in the prescribed manner and for the prescribed period and shall receive and consider any objections which may be made to any entry therein or to any omission therefrom during the preriod of such publication.

(6) Any person aggrieved by an order passed by the Revenue officer on any objection made under sub-section (5) may prefer an appeal to the prescribed Revenue Authority not below the rank of an Assistant Settlement Officer in such manner and within such period as may be prescribed.

(7) When all such objections and appeals have been considered and disposed of according to such rules as the Government may make in this behalf, the Revenue officer shall finally frame the record and shall cause such record to be finally published in the prescribed manner and the publication shall be conclusive evidence that the record has been duly prepared or revised under this section.

(8) When a record of rights has been finally published under sub-section (7), the Revenue officer shall, within such time as the [2][Director of Land Records and Surveys] may fix in this behalf, make a certificate stating the fact of such final publication and the date thereof and shall date and subscribe the same with his name and official title.]

[3][144A. **Presumption as to correctness of record of rights.**- Every entry in a record of rights prepared or revised under section 144 shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved by evidence to be incorrect.

Comments

Entries in the finally published record of rights are presumed to be correct until the contrary is shown (AIR 1940 PC 192). Though acceptable, the presumption of correctness can apply to genuine and not to forget or fraudulent, entries. Accordingly, it is open to attack that it was made fraudulently or surreptitiously (AIR 1976 SC 1485). When there is a conflict between two record of right the latter one shall prevail (AIR 1963 SC 361 at 364); as such in case of conflict between C.S. Khatian and R.S. Khatian, it is the R.S. Khatian which is to be presumed correct (AIR 1981 Cal 74; 85 CWN 357; AIR 1978 Cal 556 at 558). Where the land stood recorded in plaintiff's name, the presumption would be that the plantiff held it in the right mentioned therein (AIR 1968 Trip 5).

Record on right does not create of extinguish title, it merely raises a presumption of accuracy but the presumption is rebuttable (AIR 1963 Ori. 29; AIR 1968 Pat 450 at 453). It is no evidence of title as it is principally based on possession (1975) 2 Cal LJ 305) Where there is direct evidence against the entries, the same should not be relied on (AIR 1942 HP 22). Presumption of correctness will not prevail where there is any decision by a competent court long before publication of the record of rights (AIR 1967 Cal 100. A party relying on the presumption of correctness of the record of rifghts, validly prepared, need not prove the foundation or basis of the correctness of the entries of the record on rights (AIR 1965 Cal 328). But entries in record of right are not conclusive; they are subject to decision in suit or appropriate proceeding (AIR 1977 Knt 4).

1. The words, brackets, figure and letter within square brackets were inserted by E.P. Ord. I of 1971, s. 7(2).

2. The words within square brackets were subs. for the words "Board of Revenue" by P.O. 12 of 1973, Sch.

3. Sections 144A and 144B were inserted by E.P. Ord. VIII of 1967, s. 14.

The finally published records of right under all the agrarian reforms enactments are not only admissible but also carry presumption of correctness. When the question of possession is raised record of right may show who is in possession at a particular time (1980) 2 Cal LJ 548).

In the case reported in 30 DLR (AD) 81 it was held that according to section 103B (5) of B.T. Act every entry in a record of right finally published shall be evidence of the matter referred to be correct until it is proved to be in correct. In 33 DLR (HC) 126 it was held that the presumption of correctness as available on the strength of section 103B (5) of the B.T. Act, has got to be rebutted by the person who alleges it. In the light of the proposition of law enunciated in the Appellate Division case reported in 30 DLR (AD) 81 the R.S. khatian raises a presumption of its correctness untill proved to be incorrect and in view of the decision in 33 DLR (HC) 126 the onus is on the plaintiffs to rebut the presumption of the correctness of the R.S. Khatian as the plaintiffs have alleged that the entry of the R.S. Khatian is wrong (38 DLR 327).

144B. **Bar to jurisdiction of Civil Court.**- (1) When an order has been made under sub-section (1) of section 144 directing the preparation or revision of record of rights in respect of any area, then, subject to the provisions of section 111, a Civil Court shall not entertain any suit or application for the alteration of any rent or determination of the status of any tenant of the incidents of any tenancy in such area and if any such suit or application relating to such area is pending before a Civil Court on or after the date of such order, it shall not be further proceeded with and shall abate and if any judgement, decree or order has been passed in any such suit or any order has been passed on any such application, after the said date, it shall be inoperative and of no legal effect.

(2) No suit or application shall be brought in a Civil Court in respect of any order directing the preparation or revision of record of rights under this chapter or in respect of framing, publication, signing or as attestation of such a record or any part of it, and if any such suit or application is pending before a Civil Court, it shall not be further proceeded with and shall abate and if any judgment, decree or order has been passed in any such suit or any order has been passed on any such application, it shall be inoperative and of no legal effect.]

145. **Recovery of the cost of revision of record of rights.**- (1) Where the 1[preparation or revision] of a record of rights has been directed under this chapter in respect of any district, part of a district or local area, the expenses incurred in respect of such preparation or revision shall be recoverable from the raiyat and other occupants of land in such proportions and in such instalments, if any, as the Government having regard to all the circumstances, may determine :

Provided that no part of these expenses shall be recoverable from the raiyats and other occucpants in the case where the preparation or revision of the record of rights has been undertaken under clause (c) of sub-section (2) of section 144 with a view to settlement of fair and equitable rents of such raiyats under the revisions of chapter XIV.

(2) The portion of the aforesaid expenses which any person is liable to pay under sub-section (1) shall be recoverable by the Government as if it were an arrear of rent due in respect of the holding or other interest, as the case may be, of such person, situated within the said district, part of a district or local area.

1. The words "preparation or revision" were substituted for the word "revision" by E.P. Ord. VIII of 1967, s. 25.

CHAPTER XVIII

Jurisdiction, Appeal, Revision and Review

1[146. **Superintendence and control over Revenue officers.**- (1) The general superintendence and control over all Revenue officers shall be vested in and all such officers shall be subordinate to, the 2[Board of Land Administration.]

3[(2) Subject to the provisions of sub-section (1), a Commissioner of a division shall exercise control over all other Revenue officers in his Division.

(3) Subject as aforesaid and to the control of the Commissioner of the division, a Collector shall exercise control over all other Revenue officers in his district.]

Comments

Settlement of land granted by the Revenue Authority cancellation of settlement by the Government wether lawful under section 146 of the Tenancy Act the general power of superintendence and control over all Revenue Officers is vested in the Board of Land Administration and not the Government. The Board of Land Administration is not however empowered to revise u/s 146 the orders passed by the Revenue Officer under the Act, although the Board is the final authority to entertsin appeal and revision against any order passed under the Act by a Revenue Officer including an order granting settlement of land. There is nothing to show that the Government is empowered under any provision of the state Acquisition and Tenancy Act to cancel or rescind any order passed by the Revenue Authorities (43 DLR 210).

147. **Appeals.**- Subject to any special provisions for appeal made in this part or in any rules made under this Act, an appeal shall lie from every original or appellate order made under any of the provisions of this part by a Revenue officer as follows, namely :-

(a) to the Collector, when the order is made by a Revenue officer subordinate to the Collector;

4[(aa) to the Commissioner of the division, when the order is made by the Collector of a district within the division; and]

5. . . . . .

6[(c) to the 5[Board of Land Administration], when the order is made by the 7[Commissioner of a division.]

148. **Limitation for appeals.**- The period of limitation for an appeal under section 147 shall run from the date of the order appealed against and shall be as follows, that is to say -

(a) when the appeal lies to the Collector..... thirty days.

8[(b) when the appeal lies to the Commissioner of a division ..... sixty days.

(bb) when the appeal lies to the Board of Land Administration ..... ninety days.

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1. Section 146 was subs. for the original section 146 by P.O. 12 of 1972, Sch.
2. The words "Board of Land Administration" were substituted by the word "Government" by Ord. XLI of 1982, Sch.
3. Sub-section (2) and (3) were substituted for the former sub-section (2) by Ord. IX of 1976, Sch.
4. Clause (aa) of section 147 was inserted, ibid.
5. Clause (b) of section 147 was omitted by P.O. 12 of 1973, Sch.
6. Clause (c) of section 147 was subs. for the original clause (c), ibid.
7. The words "Commissioner of a division" were subs. for the words "Collector of a district" by Ord. IX of 1976, Sch.
8. Clauses (b) and (bb) of section 148 were subs. for the former clause (b), ibid.

[1]• • • • •

149. **Revision.**- (1) Subject to any special provision for revision made in this part, the Collector may of his own motion within one month of the date of any order passed under this part by a Revenue officer subordinate to him or on application made in that behalf within one month of the date of such order, revise such order.

[2][(1a) The Commissioner of a division may, of his own motion, within three months of the date of any order passed under this part by the collector of a district within the division or on an application made in that behalf within three months of the date of such order, revise such order.]

[3]• • • • •

[4][(3) The [5][Board of Land Administration] may, of its own motion, within six months of the date of any order passed under this part by the Commissioner of a division or on an application made in that behalf within six months of the date of such order, revise such order.]

[6][(4) The Board of Land Administration may at any time order the correction of any entry in a record of rights maintained under this part or in a settlement rent-roll prepared and finally published under this part which, it is satisfied, has been made owing to a bona fide mistake :

Provided that an order shall not be revised under this section if an appeal has been preferred against such order :

Provided further that no order for correction shall be made under sub-section (4) until reasonable notice has been given to the parties concerned to appeal and be heard in the matter.]

150. **Review by Revenue officer.**- (1) A Revenue officer may, on application made in that behalf by any party interested or of his own motion review any order passed by himself or by any of his predecessors in office under this part, and in so reviewing any order, may modify, reverse or confirm any such order :

Provided that

(a) an application for review of an order shall not be entertained unless it is made within thirty days from the date of such order or, when such application is presented after the expiry of the said period of thirty days, unless the applicant satisfies the Revenue officer that he had sufficient cause for not making the application within the said period;

(b) an order shall not be reviewed if an appeal has been preferred against such order or an application for revision of such order has been made to the superior Revenue Authority; and

(c) an order shall not be modified or reversed on a review until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

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1. Cluse (c) of section 148 was omitted by P. O. 12 of 1973. Sch.
2. Sub-section (1a) was inserted by Ordinance IX of 1976. Sch.
3. Sub-section (2) was omitted by P.O. 12 of 1973, Sch.
4. Sub-section (3) was substituted for the former sub-section (3) by Ord. IX of 1976, Sch.
5. The words "Board of Land Administration" were subs. for the word "Government" by Ord. XLI of 1982, Sch.
6. Sub-section (4) was subs. for the former sub-section (4) by Ord. IX of 1976, Sch.

151. **Computation of the period of limitation for appeals, applications for revision and review under this Act.**- (1) Sections 6,7, 8 and 9 and sub-section (2) of section 29 of the Limitation Act, 1908, shall not and, subject to the provisions of part V of this Act, the remaining provisions of the former Act, shall, so far as applicable apply to all suits, appeals and applications arising under the said Part.

(2) All suits, appeals and applications referred to in part V shall be instituted and made within the time prescribed therefor; and every such suit instituted, appeal preferred, and application made, after the prescribed period of limitation shall be dismissed, although limitation has not been pleaded.

[1][CHAPTER XVIIIA

Special Provisions for exemption of rent

151A. **Exemption of rent in respect of certain land.**- (1) Notwithstanding anything contained elsewhere in this Act, where a malik or non-agricultural tenant holds any land which is used primarily as a place of public prayer or religious worship or a public graveyard or a public cremation ground, he may apply in the prescribed form, to the Deputy Commissioner for exempting such land from payment of rent.

(2) Within three months from the date of receipt of such application, the Deputy Commissioner shall, after such enquiry as he deems fit, ascertain whether any land specified in the application is used as mentioned therein.

(3) If the Deputy Commissioner is satisfied that any land specified in the application is used as mentioned therein, he shall determine, in the prescribed manner, the area of the land so used and pass an order exempting such area from payment of rent, and, if the Deputy Commissioner is not so satisfied, he shall pass an order rejecting the application.

(4) If the area determined under sub-section (3) forms a part of a holding or tenancy, the Deputy Commissioner shall separate such area from the rest of the holding or tenancy and create a separate rent free tenancy for such area.

(5) Where a separate rent free tenancy is created under sub-section (4), the Deputy Commissioner shall reduce the rent payable in respect of the holding or tenancy out of which such rent free tenancy is created in proportion to the area of such rent free tenancy.

(6) Any person aggrieved by an order of the Deputy Commissioner under sub-section (3) may, within thirty days from the date of such order, prefer an appeal to the [2][Commissioner of the Division].

[3][(6a) Any person aggrieved by an order of the Commissioner of the Division under sub-section (6) may, within sixty days from the date of such order, made an application to the [4][Board of Land Administration] for the revision of such order.

5. . . .

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1. Chapter XVIIIA was inserted by E.P. Ordinance XXI of 1969, s. 9.

1. The words "Commissioner of the Division" were substituted for the word "Government" by Ord. IX of 1976, Sch.

2. Sub-section (6a) was inserted, ibid.

3. The words "Board of Land Administration" were subs. for the word "Government" by Ord. XLI of 1982, Sch.

4. Sub-section (7) was omitted by P.O. 12 of 1973, Sch.

(8) The Board of Land Administration may, at any time, of its own motion, revise any order passed under this section by [1][the Commissioner of the Division or] the Deputy Commissioner.

(9) An order for exemption from payment of rent under this section shall take effect from the beginning of the agricultural year next after the date of such order.

Explanation - In this section -

(a) 'a place of public prayer or religious worship' means a public place specifically earmarked, permanently preserved and regularly used exclusively for the purpose of offering prayers or worship by the followers of any particular religion or faith, such as Mosque, Jamatkhana, Eidgah, Temple, Church, Math, Synagogue, Pagoda, etc., and includes such adjuncts thereto as are necessary for such purpose and treated as appertaining to such place, but does not include any place used for deriving pecuniary benefit therefrom; and

(b) 'Deputy Commissioner' includes Additional Deputy Commissioner (Revenue).

151B. **Re-assessment of rent on land exempted from payment thereof under section 151A.**- (1) When any land exempted from payment of rent under section 151A ceases to be used for the purpose for which such exemption was allowed, it shall be liable to be re-assessed to rent and it shall be competent for the Deputy Commissioner to re-assess the rent of such land at a rate which he may deem fair and equitable having regard to the rates of rent generally paid for lands of a similar description and with similar advantages in the same village or in the neighbouring villages :

Provided that no such re-assessment shall be made unless not less than fifteen days notice has been given to the persons concerned to appear and be heard in the matter.

(2) Any person aggrieved by an order of the Deputy Commissioner under sub-section (1) may, within thirty days from the date of such order, prefer an appeal to the [2][Commissioner of the Division].

[3][(2a) Any person aggrieved by an order of the Commissioner of the Division under sub-section (2) may, within sixty days from the date of such order make an application to the [4][Board of Land Administration for the revision of such order and the order of that Board shall be final].]

[5]. . . . . .

[6][CHAPTER XVIIIB

Special Provisions for Exemption of Land Revenue in Relation to Agricultural Land

151C. **Exemption of land revenue in respect of agricultural land in certain cases.**- Notwithstanding anything contained elsewhere in this Act and subject to the provisions of this chapter, where the total area of agricultural land held in Bangladesh by a family does not exceed twenty five standard bighas, such family shall be exempted from payment of

1. The words within square brackets were inserted by Ord. IX of 1976, Sch.
2. The words "Commissioner of the Division" were subs. for the word "Government" by Ord. IX of 1976, Sch.
3. Sub-section (2a) was inserted, ibid.
4. The words within square brackets were subs. for the words "Government for the revision of such order" by Ord. XLI of 1982, Sch.
5. Sub-section (3) was omitted by P.O. 12 of 1973, Sch.
6. Chapter XVIIIB was added by P.O. 96 of 1972, Art. 2.

land revenue in respect of such lands with effect from the first Baisakh of 1379 B.S. or from such date as it may be entitled to such exemption under section 151-I, as the case may be :

Provided that a family holding a total area of agricultural land exceeding twenty five standard bighas on the 16th day of December, 1971, shall not be entitled to claim any exemption from payment of land revenue as a result of decrease in the total area to twenty five standard bighas or less due to any transfer made during the period from the 16th day of December, 1971, to the last date for submission of the statement under section 151D :

Provided further that exemption from payment of land revenue under this section or under section 151-I shall not absolve any person from the liability of payment of the Development and Relief Tax under the Finance (Third) Ordinance, 1958 (E.P. Ord. LXXXII of 1958), the Additional Development and Relief Tax under the Finance Ordinance, 1970 (E.P. Ord. XVI of 1970), the Education Cess under the Bengal (Rural) Primary Education Act, 1930 (Ben. Act VII of 1930) and the Local Rate under the Basic Democracies Order, 1959 (P.O. 8 of 1959), payable on the basis of land revenue and such other taxes, rates and cesses as may be payable under any other law for the time being in force.

151D. **Compulsory filing of statements by heads of families holding more than twenty five bighas of agricultural land.**- [1][By the 31st day of January, 1973] all heads of families, who either individually or with other members of their families held or hold more than twenty five standard bighas of agriculturla lands in Bangladesh on the 16th day of December, 1971, or on the date of submission of the statement, shall submit to the Revenue Officer a statement of all such lands in such form and manner as may be prescribed [2][:]

[2][Provided that the Government may extend the time for submission of such statements in all cases or in any particulars case or class of cases or in respect of any area up to such date as it thinks fit.]

151F. **Penalty for non-submission of statements or wilful supression of land.**- Any head of a family, who fails, without any reasonable cause, to submit the statement required under section 151D within the specified time or wilfully makes any omission from, or incorrect declaration in, the statement submitted by him under the said section, shall be liable to a fine which may extend to taka one thousand, and the land for which no statement has been filed or which has been omitted from the statement or in respect of which the incorrect declaration is made shall stand forefeited to the Government :

Provided that where the failure to submit the statement or the omission from, or incorrect declaration in, the statement relates to any land transferred by any member of the family on or after the 16th day of December 1971, such land shall not be forfeited but an equivalent quantity of land out of the lands actually held by any member or members of the family shall be forefeited in lieu thereof.

151F. **Liability of exempted holdings for re-assessment in certain cases.**- If any person who is exempted from payment of land revenue under section 151C subsequently acquires at any time agricultural land by inheritance, purchase, gift, heba or otherwise

1. The words, figures and comma within square brackets were subs. for the words, brackets, figures, and comma "With ninety days from the date of commencement of the State acquisition and Tenancy (Third Amendment) Order, 1972" by P.O. 157 of 1972, Art. 2.

2. The colon was subs. for the full stop at the end of section 151D and thereafter the proviso was added by P.O. No. 5 of 1973, Art. 2.

which, added to the total quantity of agricultural land already held by him and other members of his family, exceeds twenty five standard bighas in the aggregate, the entire quantity of agricultural land held by him and the other members of his family shall be liable to the payment of land revenue with effect from the following dates, namely :-

(i) in case of acquisition before the first day of Kartik of the Bengali year, with effect from the first day of Kartik of that year; and

(ii) in case of acquisition on or after the first day of Kartik of the Bengali year, from the first day of the Bengali year next following the date of such acquisition.

151G. **Compulsory submission of statement by head of the family acquiring land in certain cases.**- A head of a family, who, or any of the members of whose family, acquires agricultural land making the entire quantity of agricultural land held by such family liable to the payment of land revenue under section 151F, shall, within ninety days of the date of such acquisition, submit to the Reven e officer a statement of all agricultural lands held by him and the other members of his family in such form and manner as may be prescribed.

151H. **Penalty for non-submission of statement or wilful suppression of land.**- A head of a family, who fails to submit a statement under section 151G within the specified time or wilfully makes any omission from, or incorrect declaration in, the statement submitted by him under the said section, shall be liable to a fine which may extend to ta'a one thousand and the land for which no statement has been filed or which has been omitted from the statement or in respect of which the incorrect declaration is made shall stand forfeited to the Government.

151 I. **Exemption from payment of land revenue in case of decrease in area.**- Where the total area of agricultural land held by a family liable to the payment of land revenue decreases after the submission of the statement under section 151D or section 151G to twenty five standard bighas or less due to inheritance or bona fide transfer, the head of such family may apply, in the prescribed form, praying for exemption from payment of land revenue, to the Revenue officer stating the dates and reasons for such decrease, and the Revenue officer shall, on being satisfied about the statement made in the application after making such enquiry as he deems fit, pass an order allowing such exemption with effect from the following dates, namely :-

(i) in case the application is made before the first day of kartik of the Bengali year, with effect from the first day of kartik of that year; and

(ii) in case the application is made on or after the first day of kartik of the Bengali year, from the first day of the Bengali year next following the date of such application.

[1][151J. **Definition of family and head of family.**- For the purpose of this Chapter -

(a) "family" in relation to a person includes such person and his wife, son, unmarried daughter, son's wife, son's son and son's unmarried daughter :

Provided that an adult and married son who has been living in a separate mess independently of his parents continuously since [2]..... before the 16th day of December, 1971, and his wife, son and unmarried daughter shall be deemed to constitute a separate family :

Provided further that in the cases of lands held under wakf, wakf-al-aulad, debuttar or any other trust where the beneficiaries have no right to alienate such lands as their

1. Section 151J was subs. for the former section 151J by P.O. No. 135 of 1972, Art. 3.
2. The words "five years" were omitted by P.O. 157 of 1972, Art. 3.

personal property, all such beneficiaries together shall be deemed to constitute a separate family in relation to such lands; and

(b) "head of a family" means -

(i) in cases other than those mentioned in the second proviso to clause (a) the person, male or female, in relation to whom a family is determined by the Revenue officer in the prescribed manner, and

(ii) in the case mentioned in the second proviso to clause (a), the Mutawalli, Sebait or Trustee, as the case may be.]]

CHAPTER XIX

Rules

152. **Power to make rules.**- (1) The Government may, after previous publication, make rules for carrying out the purposes of this part.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-

(a) the form of the application referred to in sub-section (1) of section 86 and the manner of and procedure for determining the amount of abatement referred to in that sub-section;

1* * * * *

(c) the form of the notice referred to in clause (a) of sub-section (1) and sub-section (4) of section 89 and the amounts of process fees referred to therein;

(d) the Revenue Authority referred to in sub-section (3) and (4) of section 90;

(e) the form of the notice referred to in clause (b) of sub-section (1) of section 92 and the manner in which and the period within which such notice is to be given, and the manner of publication of the notice referred to in sub-section (3) of that section;

(f) the manner of selection of land by Revenue officer for transferring encumbrances under section 94;

(g) the procedure to be followed and the power to be exercised by Revenue officers in determining the rent-rates referred to in clause (a) of sub-section (1) of section 99, and the form of a table of rent-rates under that clause, the manner of preparing such table and the particulars to be specified therein;

(h) the form of a settlement rent-roll under clause (b) of sub-section (1) of section 99, the manner of preparing the same and the particulars to be specified therein;

(i) the manner of determining the normal yield per acre of land referred to in clause (b) of sub-section (2) and in sub-section (3) of section 100;

(j) the manner of determining the average rate of rent referred to in clause (f) of sub-section (2) and in sub-section (3) of section 100;

(k) the manner and period of publication of a draft table of rent rates under sub-section (1) of section 101 and the Revenue Authority referred to in sub-section (3) of that section;

1. Clause (b) was omitted by P.O. 72 of 1972, Art. 4.

(l) the manner and period of publication of a draft settlement rent-roll under sub-section (1) of section 108, and the disposal of objections under that sub-section;

(m) the confirming authority referred to in sub-section (1) of section 109 and the manner of final publication of the settlement rent-roll under sub-section (3) of that section;

(n) the superior Revenue Authority referred to in sub-section (1) of section 110;

(o) the manner of presenting an appeal referred to in sub-section (1) of section 111;

1. . . . . .

(q) the form of the application referred to in sub-section (1) of section 119;

(r) the manner of making the inquiry referred to in sub-section (1) of section 120, the superior Revenue Authority to whom the application referred to in that sub-section is to be submitted by the Revenue officer and the procedure to be followed in dealing with the applications referred to in sub-section (2) of that section;

(s) the manner of preparation of the scheme for consolidation of holdings referred to in sub-section (1) of section 122 and the appointment and constitution of the Advisory Committe referred to in sub-section (2) of that section;

(t) the manner and period of publication of a draft scheme for consolidation of holdings under sub-section (1) of section 123 and the disposal of objections under that sub-section;

(u) the period within which and the manner in which an appeal under sub-section (1) of section 124 and a second appeal under sub-section (2) of that section shall be presented and the superior Revenue Authority referred to in sub-section (1) of that section;

(v) the manner of assessment of the cost of proceedings for consolidation of holdings referred to in sub-section (1) of section 132 and the recovery of such cost under that sub-section;

(w) the dates of payment of instalments of rent referred to in sub-section (1) of section 135;

(x) the manner of payment or tender of rent by postal money order under section 136;

(y) the form of the written receipt referred to in section 138;

(z) the procedure to be followed in recovering arrears of rent under section 141;

(za) the manner in which the record of rights referred to in section 143 shall be maintained up-to-date;

(zb) the procedure to be followed and the powers to be exercised by Revenue Officers in revising the record of rights under section 144.

1. Clause (p) was omitted by E.P. Act VI of 1964, section 7.