# THE WEST BENGAL
# LAND REFORMS ACT, 1955

( AS AMENDED UPTODATE )

*WITH*

THE W.B. ACQUISITION AND SETTLEMENT OF HOMESTEAD LAND ORDINANCE, 1969

and

THE W.B. UTILISATION OF LAND FOR PRODUCTION OF FOOD CROPS ORDINANCE, 1969

BY

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SECOND EDITION

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*DEDICATED TO*

*my sister*

**Dr. Bela Saha** M. B. B. S. (Cal., L. M., D. G. O. (Dublin)

*who is my inspiration*

# PREFACE TO THE SECOND EDITION

Since the last edition of this book there have been two amendments of the West Bengal Land Reforms Act by the Amendment Act, 1968 preceded by Amendment Ordinance, 1967 and Ordinance No. III of 1969. The Amendment Act, 1968 amended sub-section (2B) of section 4 ; added section 16A, sub-clause (aa) to section 18 (1), sub-section (3A) to section 18. Ordinance No. III of 1969 coming into force with effect from 7th April, 1969 has inserted section 21A which has provided for statutory stay of all proceedings for termination of barga cultivation. While we may hope that the actual tillers of the soil may be elevated to the status of a tenant, we may similarly hope that the termination proceedings or the proceedings in execution for termination of barga cultivation may be allowed to be disposed of one way or the other. The West Bengal Non-agricultural Tenancy (Temporary Provisions) Act having the professed object to stay proceedings for termination of certain non-agricultural tenants only for a temporary period continued its existence for about nine years from 30th May, 1940 to 15th May, 1949 when West Bengal Non-agricultural Tenancy Act came into operation. It is hoped that the history would not repeat.

Section 21A, it may be found, is silent about the composite proceedings for ejectment of bargadar and for delivery of barga-produce. If section 21A is interpreted to mean that the proceedings of that description would remain stayed so far as they relate to termination only, an administrative difficulty of high magnitude is likely to arise, for, on the statutory stay being released, the record may be found to be lying in the Hon'ble Court in revision against the order relating to delivery. One having some experience would readily appreciate the difficulty in calling for the record and the time factor involved in the process. A skeleton record may be maintained of the composite proceedings but a definite rule on this point is still wanting.

Many new topics and a large number of unreported decisions have been added. This, however is not a glossary of case laws, nor a collection of topics compiled from decided cases.

I have stressed, instead, upon the chronological development of the law with reasons behind it on the basis of authoritative case laws both reported and unreported.

A table has been given in the beginning to show what section of W.B.L.R. Act has been brought into force in what area and on what date. This may prove useful to the busy lawyers to get at a glance the date of enforcement of a particular provision of the Act, for, on different dates different sections have been enforced in different areas of West Bengal. The West Bengal Acquisition and Settlement of Homestead Land Ordinance, 1969 with full annotations and West Bengal Utilisation of Land for Production of Food Crops Ordinance, 1969 have been added.

I am grateful to Sri Arun Kumar Purkayastha for his kindly undertaking to publish the second edition. I am also thankful to Sri T. B. Dev of W. B. Judicial Service and to Sri S. S. Gangopadhaya M.A.,LL.B., librarian Alipore Judge's Court for the valuable help rendered to me. Lastly I express my thanks to my daughter Piyali who helped me to arrange the manuscript.

Despite vigilance errors have crept up in printing. The fault is more mine than of any body.

It is earnestly hoped that the present edition of the book will prove useful in all respects.

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A. N. SAHA

# PREFACE TO THE FIRST EDITION

West Bengal Estates Acquisition Act marks the beginning of the end of feudal pattern of our land tenure system as it abolished all intermediary interests and paved the way of direct contact between the Government and the toiling peasantry. The first day of Baisakh, 1362 B.S. is a red letter day in the annals of contemporary legal history. This Act is yet another bold step to bring about the contact more closely, more on a substantial basis.

With effect from 1. 11. 1965 Bengal Tenancy Act expressly has been repealed by Notification No. 14810-L. Ref. dated 25. 9. 1965 and thus the emancipation from feudal bondage is complete at least from the standpoint of a jurist.

In the Act of 1956, however, the provisions made for the bargadars, the tillers of the soil were not happy. There were lacking comprehensive provisions regarding alienation of land by raiyat belonging to scheduled tribe. A bargadar who defaulted in delivery of jotedar's share of the produce within seven days from the date of threshing was to visit the inevitable penalty of eviction. Delivery was construed in an unreported decision *Suresh* v. *Murari* (vide page 74) to mean actual tendering or sending to the person entitled to receive delivery. Bargadar who was in doubt as to whom the share of the produce was to be delivered faced a great problem. Considerable hardship was felt by the bargadars for these stringent provisions. An amendment was being felt necessary. Eventually the Act suffered an elaborate amendment in 1965 and thereafter still another in 1966.

I have endeavoured to present to my learned readers an up-to-date compilation on the subject including even the Amendments of 1966 effected by W. B. Act No. XI of 1966. In citing cases I have kept in view the dictum—judicial declaration unaccompanied by judicial application is no authority. I have tried to be concise, but have not sacrificed substance to brevity.

I shall deem my labour amply rewarded if this book be of any assistance to the Bench and the Bar.

14. 9. 1966 A. N. SAHA

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## LEARN AT A GLANCE

*what section came into force, where, when & by what notification.*

| Section | Area of operation | Notification number | Date of commencement |
|---|---|---|---|
| | entire West Bengal with the enactment | | 30. 3. 1956 |
| | [on 30. 3. 56 *the areas subsequently transferred from Bihar to West Bengal had not formed Part of W. Bengal : Sec. 43 of Transfer of Territories Act expressly laid down that the provision relating to transfer of territories would not effect any change in the application of Acts immediately before the transfer. So fresh notification was necessary for bringing the Act in force in transferred territories*] | | |
| Do | transferred territories | 10730 L. Ref. d/-24. 6. 1967 | 1. 7. 1967 |
| Clauses (2), (7), (8), (9), of Sec. 2 | West Bengal (obviously except transferred territories) | 6346 L. Ref. d/-30. 3. 56 | 30. 3. 56 |
| Clause (10) of Sec. 2 | West Bengal except transferred territories i.e., territories transferred from Bihar or W. Bengal under Transfer of Territories Act, 1956 | 17998 L. Ref. d/-12. 10. 63 | 22. 10. 63 |
| (1), (3), (4), (6A), of Sec. 2 | Do | 14810 L. Ref. d/-25. 9. 1965 | 1. 11. 65 |

| | | | |
|---|---|---|---|
| Clause (12) of Sec. 2 | West Bengal except the Police Station of Chopra, Karandighi, ~~Goal~~ Pokhar, Islampur under the Sub-Div. of Islampur of the District of W. Dinajpur | 624 L. Ref. d/-14. 1. 1958 | 15. 1. 1958 |
| entire Sec. 2 | in areas transferred from Bihar to W. Bengal under the Transfer of Territories Act, 1956 | 10732 L. Ref. d/-24. 6. 1967 | 1. 7. 1967 |
| 3 | West Bengal minus the transferred territories as above stated | 6346 L. Ref. d/-30. 3. 1956 | 31. 3. 56 |
| 3 | Transferred territories | 10732 L. Ref. d/24. 6. 1967 | 1. 7. 1967 |
| Sub-Secs. (1), (2), (4) & (5) of Sec. 4 | West Bengal except the transferred territories | 17998 L. Ref. d/-12. 10. 1963 | 22. 10. 63 |
| Sub-Sec. (2A) to (2C) of Sec. 4 | Do | 14810 L. Ref. d/-25. 9. 65 | 1. 11 65 |
| 4A | Sadar Sub-Division, Kalimpong and Kurseong of Darjeeling district | Do | Do |
| 5 | West Bengal except the transferred territories | 2798 L. Ref. d/-22. 2. 1965 | 1. 3. 65 |
| 6 | Do | 17998 L. Ref. d/-12. 10. 1963 | 22. 10 .63 |
| 7 | Do | 2798 L. Ref. d/22. 2. 1965 | 1. 3. 1965 |
| 8 | Do | 17998 L. Ref. d/-12. 10. 1963 | 22. 10. 63 |
| 9 | Do | Do | Do |
| 10 | Do | Do | Do |
| 11 | Do | 14810 L. Ref. d/-25. 9. 1965 | 1. 11. 65 |

| | | | | |
|---|---|---|---|---|
| 12 | | Do<br>Do | Do | Do |
| 13 (omitted) | | | — | — |
| 14 | | Do | 8144 L. Ref. d/-4. 6. 1965 | 7. 6. 1965 |
| Chapter IIA | | Do | 14810 L. Ref. d/- 25. 9. 1965 | 1. 11. 65 |
| 15 | | Do | 8144 L. Ref. d/-4. 6. 1965 | 7. 6. 1965 |
| 16 | | Do | 6346 L. Ref. d/-30. 3. 56 | 31. 3. 1956 |
| 16 | (transferred territories) | | 10732 L. Ref. d/-24. 6. 1967 | 1. 7. 1967 |
| 16A | *added by Sec. 3 W.B.L.R. (Am.) Act, 1968 (Yet to come into foce)* | | | |
| Sub-secs. (1) & (2) of Sec. 17 | West Bengal except the transferred territories | | 20818 L. Ref. d/-9. 12. 1963 | 12. 12. 1963 |
| Sub-Sec. (3) of Sec. 17 | | Do | 10732 L. Ref. d/-24. 6. 1967 | 1. 7. 1967 |
| Sub-Sec. (1) & (2) of Sec. 18 | West Bengal excluding obviously the transferred territories | | 6346 L. Ref. d/-30. 3. 56 | 31. 3. 56 |
| Proviso to Sub-Sec. (1) Sub-Sec. (2A) & (2B), (5), (6) of Sec. 18 | West Bengal except transferred territories | | 14810 L. Ref. d/-25. 9. 65 | 1. 11. 65 |

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# INTRODUCTION

With the grant of the *firman* (order) of the *dewani* of Bengal, Bihar and Orissa in 1766 A.D. from Shah Alam, the last remarkable scion of the great Mughal the East India Company emerged from its veil of conspiracy as a decisive political group. The right of collecting taxes and conducting the civil administration was conferred on the Company by Shah Alam. The then Subedar of the said three provinces was reduced to a pensioned officer having the pageantry of an empty name and show.

This was followed by an era of famine and financial interregnum which induced the Board of Directors of the Company to constitute a "Supreme Council" of the English Governor. The Supreme Council began to attend the revenue questions of the provinces. In course of enquiry regarding the mode of revenue collection the Council collected interesting data and one of such data reads as follows : "The word Zemindar, generally rendered as land holder, is a relative and indefinite term ; and does no more signify an owner of land than the word Poddar signifies an owner of money under his charge, or an Abwabdar the owner of the province which he governs".[1]

Having failed to improve the condition, the Supreme Council appointed Europeans instead of natives as "supervisors".[2] We get from Long's unpublished records that these European supervisors lost no time to collude with the feudal land holders and to treat the tillers of the soil with extreme tyranny.[3]

In 1769 A.D. a temporary settlement of revenue rate was made in some important section of the country as the report says : "The actual payment of the revenue to the collecting officers of the Government was in the hands of a few responsible parties known as Zemindars or land holders who looked to the cultivators for the means of meeting the Government demands".[4]

[1] The Zemindary settlement of Bengal, Appendix. IV, Pt. I, P. 27.

[2] Talboys Wheeler, Early Records of British India, P. 364.

[3] See also Permanent Settlement of Bengal, P. 5 ; Talboy Wheeler, Early Records of British India, P. 367.

[4] The Permanent Settlement of Bengal, P. 5.

The peasantry of Bengal received this project of fixed settlement of revenue with an obvious adverse reaction for which the Supreme Council had to issue a communique to the public on 16th August, 1769. The improvement of the lands, conditions of the raiyats, the extension and relief of trade etc. were held out as the causes of the new settlement of revenue with a particular class (report of the Select Committee appointed by the Supreme Council). Again in 1770 A.D. a fresh settlement of revenue for a year was made with the old Zemindars. In 1770 A.D. corresponding to 1376 B.S. there occurred the bitter and notorious famine which virtually prompted the Court of Directors to empower the Government of Bengal to take over directly the charge of the dewany of the said three provinces on 11th May, 1772. As a result Collectors were appointed instead of supervisors and along with it a new settlement of revenue for five years was made with the old lease holders on 10th April, 1772 A.D. After expiry of five years the lease was extended for another year. Warren Hastings, the then Governor inserted a new clause in the document of settlement which reads, "They shall be liable to be dispossessed and their Zemindaries and portions of them, shall be sold to make up the deficiency."

Turning to England we find that in 1783 A.D. Mr C. J. Fox introduced his "East India Bill" having the object of making the Zemindars hereditary proprietors of the land and the tax fixed and invariable. Finally came the Bill of Mr Pitt, the then Premier of England which was passed into an Act on 15th August, 1784. By the Act the Zemindars who were displaced were restored and their situation was, as much as possible, made permanent.[5] Eventually in 1793 came Lord Cornwallis's Permanent Settlement Regulation. It is interesting to find that when popular French revolution wiped of the last vestige of feudalism, it was clamped on India by the Britishers.

This feudal pattern of land tenure system accepted by Lord Cornwallis through Permanent Settlement Regulation in 1793 however, was practically a continuation of the system introduced and rigidly pursued by Murshid Quli Khan. Thus it has been said "the land tenure system taken over by the English was in

[5] J. Mill and Wilson, The History of British India, Vol. IV, P. 412.

its main features the creation of Murshid Quli Khan. Lord Cornwallis only continued the system in a more refined but more rigid form".[1]

Permanent Settlement Regulation virtually declared the Zemindars full proprietors of the lands, if not absolute proprietors, subject to punctual payment of revenue and the right of the Government to introduce such measure as the Government thought fit and proper for mitigating the disadvantages of the tenants under the Zemindars.

It is Murshid Quli Khan who created the new landed aristrocracy in Bengal known as Zemindars whose position later was confirmed and made hereditary by Lord Cornwallis.[2]

The system introduced by Murshid Quli was popularly known as *maljamani* system. Todarmal's system of *Zabti,* i.e. direct collection of rent from the cultivators was found to be not suitable to the condition then prevailed in Bengal. Under Todarmal's system Bengal then was divided into thirty four *sarkars* and each sarkar was divided into a number of parganas or mahals, it being the lowest administrative unit.[3] Murshid Quli divided Bengal into thirteen Chaklas and thereby abolished the thirty four sarkars in Todarmal's system.[4] According to Ascoli however the chakla was in existence in Akbar's time but its development as an administrative unit was the work of Murshid Quli Khan.[5]

Each chakla during the regime of Murshid Quli Khan was placed in charge of an "Amil" who was responsible for the collection of revenue of entire chakla under his charge. The official position and responsibility of an Amil during Nawab's time can be compared with that of a Collector who in districts other than Calcutta is the Chief Officer in charge of revenue administration of the district of which he is the Collector [vide section 3(8) Bengal General Clauses Act]. The "Amil" was

[1]Dacca University, History of Bengal, Vol II, P. 409.
[2]A. C. Roy, History of Bengal, Mughal Period, P. 429; Dr. B. N. Dutta, Dialectics of Land Economics of India, P. 126.
[3]A. C. Roy, History of Bengal, Mughal Period, P. 423.
[4]A. C. Roy, History of Bengal, Mughal Period, P. 429.
[5]Ascoli, Early Revenue History of Bengal, P. 25.

also Chakla officer performing the duties of magistrate as well.[1] Under Murshid Quli ijaradars or contractors used to make actual collection of revenue. Amils again were responsible for collection of revenue from ijaradars or contractors. In the second or third generation these ijaradars came to be called Zemindars and many of them were dignified with the title of Rajas or Maharajas.[2]

It is thus clear that the system followed by Lord Cornwallis in Permanent Settlement Regulation, 1793 was not his own originally. The genesis of the system lies in that of Murshid Quli Khan.

Be that as it may, Permanent Settlement Regulation was enacted with a view to ensure easy flow of revenue to the exchequer. The system, however, did not prove useful to the country in general and to the peasantry in particular inasmuch as the Zemindars, barring however a negligible exception, to get the maximum out of the tenants under them used to rack rent them mercilessly. The tyranny of Zemindars was proverbial. The peasantry of the province groaned under inhuman torture. The peasantry were at the mercy of the revenue collectors—Zemindars as they had no direct access to the highest authority. The agricultural yield of the province in the process was in decrease. About the tyranny of the Zemindars there is the graphic description of a contemporary English historian who writes : The truth can not be doubted that the poor and industrious tenant is taxed by his Zemindar, or Collector for every extravagance that avarice, ambition, pride, vanity or intemperance may lead him into over and above what is generally deemed the established rent of his land. If he is to be married, a child born, honours conferred, luxury indulged.....all must be paid by the raiyat. And what heightens the disrespectful scene, the more opulent, who can better obtain redress for imposition, escape, while the weak are obliged to submit.

In order to mitigate the pitiable condition of the peasants, Rent Act, 1859 was passed. Under the said enactment a tenant became an occupancy raiyat if the same land was cultivated by

[2] A. C. Roy, History of Bengal, Mughal Period, P. 429;
[2]Ibid, P. 429.
[3] Talboys Wheeler, Early Records of British India, P. 373

him for twelve years. The Zemindars however lost no time to frustrate the object of the enactment by not allowing the same tenant to cultivate the same land for twelve years at a stretch. This necessitiated the passing of Bengal Tenancy Act, 1885. Under that Act the raiyat was entitled to occupancy right by cultivating some land not necessarily the same land in the same village continuously for twelve years. This gave the raiyats some status. Bengal Tenancy Act, 1885 suffered a major amendment in 1928 and then still another in 1938. Soon after the passing of the Bengal Tenancy (Amendment) Act, 1938 the Government appointed a Land Revenue Commission presided over by Sir Francis Floud to examine the then land tenure system. The report of the Committee submitted in 1940 disclosed the necessity of abolition of Permanent Settlement Regulation and introduction of a revolutionary land tenure system by which the tenants of the lowest degree could come directly under the Crown. Unfortunately for us, due to out-break of war, no more action could be taken than appointment of an expert committee for assessing the implications of the recommendations of Floud Commission. This Expert Committee called Bengal Administrative Enquiry Committee in 1945 concurred with the views of Floud that the Permanent Settlement Regulation should be abolished and the dying and decadent feudal pattern of land tenure system must be given a go by as it was doomed and had no chance of survival.

The cumulative effect of the reports and the desire of the people led to the passing of Estates Acquisition Act, 1954. It mainly brought about the acquisition of all estates and abolition of all rent receiving interests. After the amendment of Art. 31A, Constitution of India the acquisition of the rent receiving interests of raiyats and the excess lands of raiyats became feasible and accordingly section 52 of Estates Acquisition Act was brought into force.

Rights in relation to an estate did not include under the Constitution the rights and interests of raiyats and under-raiyats. But the fourth Amendment of the Constitution removed the difficulty and since the fourth Amendment rights in relation to an estate were made comprehensive to include even the interest of raiyats and under-raiyats. Under section 52 of Estates Acquisition Act as amended by W.B.E.A. (Amendment)

Act, 1954 (Act XXXV of 1955) the State Government was empowered to issue notification to treat raiyats and under-raiyats as if they were intermediaries. So after issuance of such notification which has been made on 10th April, 1956 raiyats and under-raiyas were also included within the scope of the expression "intermediaries".

Acquisition having been complete the Government felt the necessity of making a comprehensive enactment for regulating the relationship of the tenants interse and between a tenant (raiyat) on the one hand and the State on the other. Rule 4 of West Bengal Estates Acquisition Rules provided for the terms and conditions under which an intermediary retaining lands could hold under the Government. Rule 4 however was too inadequate to contemplate all aspects of the matters. This enactment therefore was brought into existence. With effect from 1st. November, 1965 Bengal Tenancy Act stands repealed in toto. This enactment thus occupies a very important role in the matters of relationship between the raiyats interse as also between a raiyat on the one hand the Government on the other.

# THE WEST BENGAL LAND REFORMS ACT, 1955.

## WEST BENGAL ACT X OF 1956

[Assent of the President was first published in the Calcutta Gazette, Extraordinary of the 30th March, 1956.]

[30*th March*, 1956.]

*An Act to reform the law relating to land tenure consequent on the vesting of all estates and of certain rights therein in the State.*

It is hereby enacted in the Sixth Year of the Republic of India, by the Legislature of West Bengal, as follows:—

### Notes.

**Preamble:** It has been held in *Inder Singh* v. *State of Punjab* [1957 S. C. A. 735 at p. 749] that correctness of a preamble cannot be disputed and as has been held in *Re*: *Kerala Education Bill* [A. I. R. 1955 S. C. 956: 1956 S. C. R. 995] the preamble cannot be resorted to cut down the enactment, and it is also settled law that preamble of an Act can be referred to only when there arises a doubt or ambiguity in interpretation of the provisions of the statute.

LORD HALSBURY in *Powell* v. *Kempton Park Race Course Co.* [1899 A. C. 143 at p. 157] observed "Two propositions are quite clear: one that a preamble may afford useful light as to what a statute intends to reach and another that if an enactment is itself clear and unambiguous no preamble can qualify to cut down the enactment. In *Deorajan* v. *Satyadhan* [58 C. W. N. 64 at p. 68] SEN, J. has observed that if there is some obscurity in the words of the body of the Act the terms of preamble may be looked into. In *Kachuni* v. *States of Madras and Kerala* [A. I. R. 1960 S. C. 1080: 1960 S. C. A. 412: 1960 Ker. L. R. (S. C.)31] SUBBA RAO, J. refused to consider a preamble because there was no ambiguity in the enacting part. His Lordship laid down "The preamble of a statute is a key to the understanding of it and it is well established that it may legitimately be consulted to solve any ambiguity or

to fix the meaning of the words which may have more than one, or to keep the effect of the Act within its real scope, whenever the enacting part is in any of these respects open to doubt". In *Burrakur Coal Co.* v. *Union of India* [A. I. R. 1961 S. C. 954] MUDHOLKAR, J. while observing that preamble must be disregarded when the language of the Act is clear observed that where the object or meaning of an enactment is not clear the preamble may be resorted to explain it; again where general language is used in an enactment which, it is clear, must be intended to have a limited application, the preamble may be used to indicate to what particular instances the enactment is intended to apply. In *Abharan* v. *Sanat Kumar* [68 C. W. N. 574 at p. 584] D. BASU, J. has laid down that the scope and purpose of an enactment (there W. B. E. A. Act) cannot be circumscribed with reference to preamble, though in case of doubt, the preamble may be referred to in order to ascertain the mind of the legislature.

**Rules for Interpretation:** Unless there be any ambiguity it would not be open to the court to depart from the normal rule of construction which is that the intention of the legislature should be primarily gathered from the words which are used. It is only when the words used are ambiguous that they should stand to be examined and construed in the light of surrounding circumstances and constitutional principles and practices. In construing any statutory enactment regard must be had not only to the words used but to the history of the Act and the reasons which led to its being passed. The mischief which cured must be looked at as well as at the care provided [*Commr. of I. Tax* v. *Sodra Devi*, 1958 *S. C. A.* 862]. As laid down in Maxwell's Interpretation of Statutes, 11th Edn. P. 2 the object of all interpretation of statute is to determine what intention is conveyed, either expressly or impliedly by the language used, so far as is necessary for determining whether the particular case or state of facts presented to the interpreter falls within it. Referring to the rules of literal construction Maxwell lays down in 11th Edn. P. 3 that the first and most elementary rule of construction is that it is to be assumed that words, phrases of technical legislation are used in their technical meaning if they have acquired one, otherwise in their ordinary meaning and the

second that the phrases and the sentences are to be construed according to the rules of grammar.

Charles P. Curties in his "A better theory of legal interpretation", P. 155 of "Jurisprudence in action—1953 Ed. by Newyork City Bar Assocn." advances the modern rules of interpretation by saying "Words are but delegations of the right to interpret them : in the first instance by the person addressed, and in the second and ultimate instance by the courts who determine whether the person addressed has interpreted them with authority."

As laid down in *Ollala Ambiah* v. *A. Mallanna* [A. I. R. 1964 A. P. 514] a provision of law should be so construed that no part of it becomes inoperative or superfluous. No part of the provision should be read as redundant and entire scheme should be given effect to. As laid down in *Asoka Mills Ltd.* v. *Industrial Court* [A.I.R. 1964 Guz. 198] when there are two meanings, each adequately satisfying the meaning of the statute and absurdity and hardship is produced by one of them, that must have a legitimate influence in inclining the mind to the other, for it is reasonable to presume that the Legislature must have used the words in a sense which accords most with reason and justice. In an Allahabad Full Bench case it has been observed that when a statute uses words which are plain and unambiguous it is the duty of the Court to interpret them according to its plain and natural meaning without adding words to it [*Abdul Wahid* v. *Deputy Director of Consolidation,* A. I. R. 1968 All. 402 : 1968 All. L. J. 117.] Ambiguity, however, can not be created artificially [*I. T. Commissioner* v. *Indian Bank,* A. I. R. 1965 S. C. 1473]. Similarly an interpretation leading to a redundancy of a word should ordinarily be avoided [*Abdul Aziz* v. *Mysore State Transport,* A. I. R. 1965 Mys. 286].

**Hardship and inconvenience:** As held in *Commr. of Agr. I. Tax* v. *Keshab* [1950 S. C. R. 435 at P. 446] and in *Rananjoya Sing* v. *Baijnath* [1955 S. C. R. 671 at P. 676] hardship and inconvenience cannot alter the plain meaning of a statute. Also it has been impressed in *Mysore State E. Board* v. *Bangalore W. C. Mills* [A. I. R. 1963 S. C. 1128] and in *State of M. P.* v. *Vishnu Prakash* [A. I. R. 1966 S. C. 1593] that

inconvenience is not a decisive factor in interpretation of a statute.

**Remedial Statute:** Remedial statutes should be construed to enhance the remedy rather than to retard it [*Hill* v. *Ramtaran*, A. I. R. 1949 F. R. 79; *R. L. Banerjee* v. *A. K. Ghose*, 64 C. W. N. 685].

Beneficient legislation should receive a liberal construction [*Ollala Ambiah* v. *A. Mallanna*, A. I. R. 1964 A. P. 514 : *Jibubhai Purusottam* v. *Chaggen Karson*, A.I.R. 1961 S.C. 149 : *Magiti* v. *Pandav Bisori*, A. I. R. 1962 S. C. 547 : (1962) 3 S.C.R. 673 : *Ramji Missir* v. *State of Bihar*, A.I.R. 1963 S. C. 1088]. But liberality can not overstep the legitimate limits of interpretation, nor can import which is not recognised by the legislature [*Narayanswami* v. *Padmanabhan*, A.I.R. 1966 Mad. 394].

**Statement of Objects and Reasons:** Though it is not legitimate to refer to statements of objects and reasons as an aid to construction or for ascertaining the meaning of any particular word used in the Act or statute, nevertheless they may be referred to for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the bill to introduce the same and the extent and urgency of the evil which he sought to remedy. [*Commr. of Income Tax* v. *Sodra Devi*, 1958 S. C. A. 862 : *State of W. B.* v. *Subodh Gopal*, A. I. R. 1954 S.C. 92 : 1954 S. C. A. 65 : *Standard Literature Co.* v. *Union of India*, 71 C. W. N. 719 at P. 727].

**Punctuations :** Formerly the Bill was, at one of its stages, engrossed without punctuation on parchment, and as neither the marginal notes nor the punctuation appeared on the roll, they formed no parts of the Act. This practice was discontinued in 1849, since which time a copy of each Act, printed on volume by the Queen's printer, is preserved in the House of Lords.... Nevertheless, it has been said that they are not to be taken as parts of the statute [Maxwell's Interpretation of Statutes, 11th Edn., PP. 41-42].

Thus it is an error to rely on punctuations in construing a statute [*Maharani of Burdwan* v. *Krishna Kumari*, I.L.R. 14 Cal. 367 at p. 372]. The court is bound to read without commas

[*L.P.E. Pugh* v. *Asutosh Sen*, I.L.R. 8 Pat. 516 at p. 525]. Commas are no part of the statute [ *Raja Shivratan* v. *S.G.P. Committee*, 5 D.L.R. Simla 283 at p. 290]. Punctuation marks are no part of the statutes [*Shyamapada v. Asstt, Registrar, Co-operative Societies*, A. I. R. 1964 Cal. 190 ; *Sarju Singh* v. *Gurdwaru* A. I. R. 1963 H. P. 9].

**Marginal notes :** Marginal notes cannot be looked at for interpreting a statute, but where ambiguity arises, it can be used to clear it [ *Jasawantalal* v. *Navin Chandra*, (1960) 62 Bom. L.R. 527 ; *Budhan Sing* v. *Nabi Bux*, A.I.R. 1962 All. 43 ]

LORD JUSTICE HARMAN in *Parsons* v. *B. N. M. Laboratories Ltd.* [(1963) 2 All. E. R. 674] deprecated the attempt of using side notes to sections and marginal notes in interpreting a section. In *Re. Working U.D.C. Act* [(1914) 1 Ch. 322] LORD JUSTICE PHILLIMORE said that when marginal notes have been treated by the Parliament as established they may be deemed to form part of the Act. In *Dormer* v. *New Castle upon Tyne* [(1940) 2 All. E.R. 521] it was held, an authentic marginal note may relegate a proviso to a particular portion of the Act. See also Maxwell, 3rd Edn. P. 42.

**Sectional Headings:** As to the sectional headings it has been laid down in *Mallikarajun* v. *Official Receiver* [A. I. R. 1938 Mad. 449] various headings are not to be treated as if they were marginal notes or were introduced into the Act merely for the purpose of classifying the enactments. They may constitute an important part of the Act itself. They may be read not only as explaining the section which immediately follows them as preamble to a statute may be looked to, to explain its enactments but as affording a better key to the construction of the section which follows than might be afforded by a mere preamble. This view of Madras High Court has been followed in *Md. Shafi* v. *Dt. Magistrate* [A. I. R. 1964 J. K. 23]. As observed in *Re. Penrhyn's Settlement* [(1923) 1 Ch. 143] the heading cannot control the plain meanings of the words and phrases in the section. But it has been observed in *Martin* v. *Fowler* [(1926) A. C. 746] that they can explain any wording whose meaning is open to doubt. But sectional heading cannot be taken into consideration where the language of the section is

clear [*Ramshankar* v. *S. I. Foundry,* A. I. R. 1966 Cal. 512] See also Maxwell, 3rd Edn., PP. 48-49.

**Statute when mandatory or directory:** Crowford on Construction of Statutes at P. 516 lays down "The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and its consequences which would follow from construing it one way or other."

This passage from Crowford has been approved in *State of U. P.* v. *M. Srivastava* [A.I.R. 1957 S. C. 912: 1958 S. C. R. 533: 1957 S. C. A. 1022].

In Craise On Statute law, 5th Edn., P. 242 it has been stated that no universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligated with an implied nullification for disobedience; and that it is the duty of the courts of justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed. In *Hari Vishnu* v. *Ahammad Ishaque* [A.I.R. 1955 S.C. 233: 1955 S.C.A. 105: 1955 S.C.R. 1104] it has been observed "It is well established that an enactment in form mandatory might in substance be directory and that the use of the word 'shall' does not conclude the matter. In *State of U.P.* v. *Baburam* [ A.I.R. 1961 S. C. 751 ] their Lordships in deciding whether a particular rule in Police Regulation is mandatory or directory summed up the relevant rules as follows "when a statute uses the word 'shall' prima facie it is mandatory, but the court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the legislature the court may consider inter alia, the nature and design of the statute, and the consequences which would follow from construing it in one way or other, the impact of other provisions whereby the necessity of complying with the provision in question is avoided, the circumstances, namely the status provided for the contingency of the non-compliance with the provisions is or is not visited by some penalty, serious or trivial

consequences that flow therefrom, and above all, whether the object of the legislature will be defeated or furthered."

In *Collector, Monghyr* v. *Keshab Prosad* [A.I.R. 1962 S.C. 1694] it has been laid down "The question whether any requirement is mandatory or directory has to be decided not merely on the basis of any specific provision which for instance sets out the consequences of the omission to observe the requirement, but on the purpose for which the requirement has been enacted, particularly in the context of other provisions of the Act and the general scheme thereof." This passage has been followed in *Dwarka* v. *Kamal Narain* [A.I.R. 1964 M.P. 273].

It has been laid down in Halsbury's Laws of England, 3rd Edn., Vol. 36, Para 656 "Where a statute requires an act to be done at or within a particular time, or in a particular manner, the question arises whether the validity of the act is affected by a failure to comply with what is prescribed." If it appears that the Parliament intended disobedience to render the Act invalid, the provision in question is described as "mandatory", "absolute", "imperative" or "obligatory" ; if on the other hand compliance was not intended to govern the validity of what is done, the provision is said to be "directory". In Southerland's Statutory Construction, 3rd Edn., Vol. 2, Art 2801 it is stated "The important distinction between the directory and the mandatory statutes is that violation of the former is attended with no consequences, while the failure to comply with the requirements of the latter either invalidates purported transactions or subjects the non complier to affirmative legal liabities.....Although directory provisions are not intended by the legislature to be disregarded, yet the seriousness of non-compliance is not considered so great that liability automatically attaches for failure to comply." The question of compliance remains for judicial determination. If the legislature considers the provisions sufficiently important that exact compliance is required then the provision is mandatory. These passages have been quoted with approval in *Sardar Mal* v. *Gayatri Devi* [A.I.R. 1964 Raj. 223].

**Repeal, Revival and effect of pending actions on repeal of an enactment :** Where an Act repealing, in whole or part,

a former Act, is itself repealed, the last repeal does not revive the Act or provisions before repealed, unless words be added reviving them [Maxwell's Interpretation of Statutes 11th Edn., p. 390]. Where the provisions of one Statute are, by reference, incorporated in another and the earlier statute is afterwards repealed, the provisions so incorporated obviously continue in force so far as they form part of the second enactment [Maxwell, 11th Edn., p. 393]. This principle has been followed in a series of decisions namely [*Secy of State* v. *Hindustan Co-op. Society*, 35 C.W.N. 794 ; *Safi* v. *State of W. Bengal*, 55 C.W.N. 463 ; *Corporation of Calcutta* v. *Omeda*, 60 C.W.N. 319 ; *Bhagat Ram* v.*Pravinrendra*, 60 C.W.N. 1]

Where an Act expired or was repealed, it was formerly regarded, in the absence of provision to the contrary, as having never existed, except as to matters and transactions past and closed. But now under the provision of section 38(2) Interpretation Act of England[1] a repeal unless contrary intention appears does not affect the previous operation of the repealed enactment, or anything duly done or suffered under it, and any investigation, legal proceeding, or remedy be instituted, continued, or enforced, in respect of rights, liabilities and penalties under a repealed Act, as if the repealing Act had never been passed [Maxwell, 11th Edn., p. 192].

**Substantive and procedural law : rules of construction :** Statutes creating or taking away substantive rights are ordinarily prospective unless by express words or necessary implication the legislature makes them otherwise. The retrospective operation will be limited only to the extent to which it has been so made by express words or by necessary implication [*Mahadeolal Kanodia* v. *Administrator General, West Bengal*, A. I. R. 1960 S.C. 936 : 1960(3) S.C.R. 578 : 1961(1) S.C.J. 15]. It is one of the established principles of construction of statutes that there is a presumption that no legislation regarding substantive right is retrospective unless the Statute gives retrospective effect by express words or by necessary implication and further, retrospective operation even in such a case will be limited only to the extent to which it has been so made by express words or by

[1] This is parimateria with section 6 of General Clauses Act.

necessary implication [*Re. Pacific Bank Ltd.* 70 C.W.N. 1121 at p. 1126]. A substantive right already accrued is not lost by alteration in law unless provision is made expressly in that behalf or a necessary implication arises [*Kashibai* v. *Mahadu,* A.I.R. 1965 S.C. 703 at 705]. But a change in the law of procedure operates retrospectively and applies to pending proceedings, unlike the law relating to vested rights [*Anant Gopal Sheorey* v. *State of Bombay,* A.I.R. 1958 S.C. 915 : 1959 S.C.R. 919 : 1958 S.C.J. 1231]. In a case of construction of procedural or adjective law it is prima facie construed as retrospective [*State of Bombay* v. *Supreme General Film Exchange,* A.I.R. 1960 S.C. 980 ; *Re. Pacific Bank Ltd.,* 70 C.W.N. 1121 at p. 1126].

When there is an amendment involving curtailment or taking away of a vested right, retrospectivity cannot be given unless there are strong words to indicate it [*Collector* v. *Habib-Ullah Din,* A.I.R. 1967 J. K. 44].

**Proviso :** A proviso is normally an excepting or qualifying clause and the effect of it is to except out of the preceding clause upon which it is engrafted something which but for proviso would be within it [*Angurbala* v. *Devavrata Mullick,* (1961) 6 D.L.R. S.C. 273 ]. A proviso should not be interpreted so as to have greater effect than strict construction of the proviso renders necessary. Where a proviso is inserted to protect persons who are unreasonably apprehensive of the effect of an enactment where there is really no question of its application to their case, the enactment is not to be construed against the intention of the legislature so as to impose a liability upon the people who are not so apprehensive [Maxwell's Interpretation of Statutes, 11th. Edn. p. 156].

## CHAPTER I

### Preliminary

*1. Short title, extent and commencement.*—(1) This Act may be called the West Bengal Land Reforms Act, 1955.

(2) It extends to the whole of West Bengal except the areas described in Schedule I of the Calcutta Municipal Act, 1951 (West Bengal Act XXXIII of 1951), as deemed to have been amended under section 594 of that Act.

(3) This section shall come into force at once and the remaining provisions of this Act, in whole or in part, shall come into force on such date or dates and in such district or part of a district as the State Government may from time to time by notification in the *Official Gazette* specify.

### Notes

*Calcutta* has been excluded from the operation of this Act. "Calcutta" has been defined in clause (11) of Sec. 5 of the Calcutta Municipal Act, 1951 and the boundary of its area has been given in Schedule I to that Act. The area comprised within the Municipality of Tollygunge has been included within Calcutta and brought under the purview of the Calcutta Municipal Act, 1951 under sec. 594 thereof.

Sec. 1 has come into operation with the publication of this Act in the Calcutta Gazette, *Extraordinary*, dated 30th March, 1956.

The State Government has been empowered by sub-sec. (3) to specify from time to time by notification in the Official Gazette the date or dates when and the district or part of a district where the remaining provisions of this Act, either in whole or in part, shall come into force.

So far the following notifications under sub-sec. (3) have been made by the State Government bringing into force certain provisions of the Act, mentioned therein, namely :—

"Notification No. 6346L. Ref. 30th March, 1956—In exercise of the power conferred by sub-section (3) of section 1 of the West Bengal Land Reforms Act, 1955 (West Bengal Act X of 1956), the Governor is pleased to specify the 31st day of March as the date on which the provisions of clause(2), clause (7), including explanation thereto, clause (8) and clause (9) of section 2, section 3, section 16, section 17 [except sub-section (3) thereof], section 18, section 19, section 20, section 21, section 59 so far as it relates to clause (7) thereof, and section 60 of the said Act shall come into force in all the districts of West Bengal." (Vide Calcutta Gazette, *Extraordinary*, dated March 31, 1956, Part I, pages 679-680.)

Notification no 14990 L. Ref. 13. 8. 1957—By this notification section 57 of the Act was brought into force with effect from 1.9.1957 in all the districts of W. Bengal except in the district of Purulia, police stations Chopra, Karandighi, Goalpokhar and Islampore under the sub-division of Islampore in the district of W. Dinajpore

Notification No. 624L. Ref.—14 .1. 58 : By this notification section 2(12) was brought into force on and from 15. 1. 58 in all the districts of West Bengal except the Police stations of Chopra, Karandighi, Islampur and Goalpokhar of Raiganj subdivision in the district of West Dinajpur and the district of Purulia.

Notification No. 2730 L. Ref.—13. 2. 58 : By this notification Sections 19A and 19B were brought into force on 16. 2. 58 in all the districts of W. Bengal except in the police stations of Chopra, Karandighi, Islampur and Goalpokhar of Raiganj subdivision in the district of W. Dinajpur. These two sections were brought into the Act by W. B. L. R. (Am.) Act, 1957 (W. B. Act XXIII of 1957).

Notification No. 17998 L. Ref.—12. 10. 1963 : By this notification clause 10 of section 2, sub-section 3 of section 4, sections 6, 8, 9, 10, 54, 55 were brought into force in all districts of W. Bengal except the areas transferred from Bihar to W. Bengal under Bihar and West Bengal (Transfer of Territories) Act, 1956 (Act 40 of 1956). Section 18A was brought into the Act by an Ordinance dated 16. 1. 60 which later was replaced by W.B.L.R. (Am.) Act, 1960 (W. B. Act VI of 1960). Proviso

to section 19(2) was also added by Act VI of 1960. By West Bengal Land Reforms (Second Amendment) Act, 1960 (W. B. Act XVIII of 1960) for sub-section (3) of section 20 subsection (3) (i) and (3) (ii) were substituted.

By West Bengal Land Reforms (Amendment) Act, 1962 subsections (3) and (4) were added to section 18 and two provisos were added to section 19.

Notification No. 20818-L. Ref.—9. 12. 1963 : By this notification sub-section (3) of section 17 was brought into force with effect from 12. 12. 1963.

Notification No. 2798 L. Ref.—22. 2. 1965 : By this notification sections 5 and 7 were brought into force with effect from 1. 3. 65 in all the districts of West Bengal except the areas transferred from Bihar to West Bengal under Bihar and W. Bengal (Transfer of Territories) Act, 1956.

Notification No. 8144 L. Ref.—4. 6. 1965 : By this notification section 2(6), sub-sections (1), (2), (4), and (5) of section 4, section 14, section 15, section 49 and section 58 were brought into force with effect from 7. 6. 1965 in all the districts of West Bengal except the areas transferred from Bihar to West Bengal under Bihar and West Bengal (Transfer of Territories) Act, 1956.

By W. B. L. R. (Am.) Act. 1965 (W. B. Act. XVIII of 1956) sub-sections (6A) to section 2 ; (2A) to (2C) to section 4; section 4A, sections 14A to 14I (Chapter IIA), proviso to section 18 (1), sub-sections (2A), (2B), (5), (6) to section 18, sub-sections (3) and (4) to section 19, sections 12, 23, 23(A), 33, 34, proviso to section 38, sections 51, 51A to 51D have been added.

Notification No. 14810-L. Ref.—25. 9. 1965 : By this notification sub-sections (1), (3), (4) and (6A) of section 2 ; sub-sections (2A), (2B) and (2C) of section 4, section 4A, section 11 ; section 12 ; all the provisions of Chapter IIA ; proviso to sub-section (1) and sub-sections (2A), (2B), (5), (6) of section 18 ; sub-sections (3) and (4) of section 19, all the provisions of chapters IV, VII and VIII, section 56 and clauses (1), (2), (3), (4), (5) and (6) of section 59 have been brought into force in all the districts of W. Bengal except in the areas

transferred from Bihar to W. Bengal under the Transfer of Territories Act, 1956.

By W. B. Land Reforms (Amendment) Act, 1966 sub-section (9A) to section 2, sub-section (2A) to section 4, sub-section (2) & (3) to section 19A have been added.

By notification No. 6464-L. Ref.—23. 4. 1966 sections 39, 40, 41, 42 have been brought into force in all the districts of W. Bengal except the areas transferred from Bihar to W. Bengal under Bihar and West Bengal (Transfer of Territories) Act, 1956 (Act 40 of 1956) with effect from 1. 5. 1966.

By notification No. 11310-L. Ref.—5. 7. 1966 all the Junior Land Reforms Officers of each district except the areas transferred from Bihar to West Bengal under the Bihar and W. Bengal (Transfer of Territories) Act, 1956 have been appointed Revenue officer under sec. 23A, W. B. L. R. Act. (vide Cal. Gaz. Extra Ord. Part I, No. 545 dated 6. 7. 1966.)

Notification No. 10730 L. Ref.—24. 6. 1967 : By this notification West Bengal Land Reforms Act was brought into force with effect from 30. 6. 1967 in the transferred territories, the notification being published under the second proviso to section 3(3) of W. B. Transferred Territories (Assimilation of Laws) Act, 1958 (W. B. Act No. X of 1958).

Notification No. 10732-L. Ref.—24. 6. 1967 : With effect from 1. 7. 67 the following provisions of the Act have been brought into force in all the areas transferred from Bihar to West Bengal under the West Bengal (Transfer of Territories) Act 1956 (Act 40 of 1956) namely sections 2, 3, 16, 17 (except sub-section 3 thereof), sec. 18, 18A, 19, 19A, 19B, 20, 21, 57, 58, 59 (so far as it relates to clause 7 thereof) and section 60.

By notification No. 15088-L. Ref.—14. 9. 1967 all the Sub-Divisional Magistrates have been appointed to discharge the function of the Collector as the prescribed authority under sub-clause (i) of clause (b) of sub-sections (1) and (2) of section 5 read with Rule 5 of the W. B. Land Reforms (Transfer of Holding) Rules, 1965 within their respective jurisdiction.

By West Bengal Land Reforms (Amendment) Act, 1968 published in Gazette of India[1] sub-section (2B) of sec. 4 was amended, Section 16A, sub-clauses (aa) were added ; after sub-

[1]This notification was published in Gazette of India because West Bengal then was under President's Rule.

sec.(3) of section 18 a new sub-section (3A) has been added and W. B. L. R. (Am.) Ordinance, 1967 has been repealed.

2. *Definitions*— In this Act, unless there is anything repugnant in the subject or context,—

(1) "agricultural year" means the Bengali year commencing on the first day of *Baisakh;*

(2) *"bargadar"* means 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 of such land to that person;

(3) "certificate" means a certificate signed under the Bengal Public Demands Recovery Act, 1913 (Ben. Act. III of 1913);

(4) "Collector" means the Collector of a district or any other officer appointed by the State Government to discharge any of the functions of a Collector under this Act;

(5) "consolidation" includes re-arrangement of parcels of land comprised in a holding or in different holdings for the purpose of rendering such holding or holdings more compact;

(6) "holdings" means the land or lands held by a *raiyat* and treated as a unit for assessment of revenue;

[2][(6*A*) "Incumbrance" means any lien, easement or other right or interest created by a raiyat on his holring or in limitation of his own interest therein, but does not include the right of the bargadar to cultivate the land of the holding;]

(7) "land" means agricultural land [3][other than land comprised in a tea garden which is retained under sub-section (3) of section 6 of the West Bengal Estates Acquisition Act, 1953] and includes homesteads;

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[2] Clause (6A) *added* by West Bengal Land Reforms (Am.) Act, 1956 (W B. Act VIII of 1965).

[3] Inserted by *ibid.*

*Explanation*:—"Homestead" shall have the same meaning as in the West Bengal Estates Acquisition Act, 1952 (West Ben. Act I of 1954).

(8) "Personal cultivation" means cultivation by a person of his own land on his own account—

(a) by his own labour, or

(b) by the labour of any member of his family, or

(c) by servants or labourers on wages payable in cash or in kind or both;

(9) "prescribed" means prescribed by rules made by the State Government under this Act;

[1](9A) "prescribed authority" means an authority appointed by the State Government, by notification in the Official Gazette, for all or any of the purposes of this Act;

(10) *raiyat* means a person who holds land for purpose of agriculture;

(11) "revenue" means whatever is lawfully payable or deliverable in money or kind or both by a *raiyat* under the provisions of this Act in respect of the land held by him;

(12) "Revenue Officer" means any officer whom the State Government may appoint by name or by virtue of his office to discharge any of the functions of [a] Revenue Officer in any area.

**Note**

**Commencement :**Clauses (2), (7) including *Explanation* thereto, (8) and (9) of sec. 2, have been brought into force in all the districts of West Bengal with effect from 31. 3. 56 as per Notification No. 6346L. Ref.—dated 30. 3. 56.
Section 2 (12) has been brought into force in the whole of West Bengal except the police stations Chopra, Karandighi, Goalpokhar and Islampore under the sub-division Raiganj of W. Dinajpore and the district of Purulia with effect from 15. 1. 1958 by Notification No. 624-L. Ref.—dated 14. 1. 1958.

[1]*The sub-section has been added by W. B. L. R.* Amendment *Act,* 1966.

Section 2(10) has been brought into force in entire West Bengal except the territories transferred from Bihar to West Bengal by Bihar and W. Bengal (Transfer of Territories) Act. The section has become operative with effect from 22. 10. 63 ; section 2(6) has been brought into force in those areas with effect from 7. 6. 1965.

Sub-sections (1), (3), (4), (6A) of sec. 2 have been brought into force in all the districts of West Bengal except in the areas transferred from Bihar to W. Bengal by Bihar and W. Bengal (Transfer of Territories) Act, (Act 40 of 1956) with effect from 1. 11. 1965.

Entire sec. 2 has been brought into force in the transferred territories with effect from 1. 7. 67 by notification No. 10732 L. Ref.—d/-24. 6. 1967.

**"Agricultural Year" :** The present definition of the word is a reproduction of Sec. 3(1) of B.T. Act minus the proviso whereby it was provided "where immediately before the commencement of B.T. (Am.) Act, 1928 any other year has prevailed for agricultural purposes that year shall continue to prevail for those purposes until the first day of Baisakh next following the date of commencement of that Act".

That proviso has been deleted as being redundant and as a result the meaning of the word "Agricultural Year" has been made uniform everywhere.

**"Bargadar" :** The Bengal Tenancy Act, 1885, recognised the system of cultivation of land by "adhi", "barga" or "bhag" but did not give the person so cultivating under that system any status of a tenant except when such person (1) was 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 (2) was held by a Civil Court to be a tenant. See proviso to cl. (17) of sec. 2, B. T. Act. The term "bargadar" was first defined in the West Bengal *Bargadars* Act, 1950 (W. Ben. II of 1950), now repealed by this Act. See cl. (*b*) of sec. 2, Bargadars Act, 1950. The present Act has repealed the Bargadars Act and has embodied in Chapter III the rights and liabilities of bargadars and owners of land *inter se*. The present definition of "bargadar" is a partial reproduction of the definition given in the repealed Act.

**Barga-possession of the bargadar under the erstwhile intermediary after the vesting:** The West Bengal Estates Acquisition Act implies that the erstwhile owner would continue in possession after the vesting of the estates in 1362 B.S. until possession is taken by the State Government. Possession of the owner of the land after the vesting was not by itself unlawful. Therefore, possession of the bargadar of such land would not become unlawful. But as soon as possession is taken under section 10 W.B.E.A. Act it would be unlawful for the bargadar to possess the land under the former owner who could not lawfully possess. Thus the bargadar is bound to deliver bhag-produce to the erstwhile intermediary so long the possession is not taken under section 10 W.B.E.A. Act by the Government [*Sudir Ch. Manna* v. *Srish Ch. Dhara,* 71 C.W.N. 838]

But in *Promotha Nath Basu* v. *State of West Bengal and others,* C.R. No. 829 of 1958 decided by S. K. SEN, J, on 28. 1. 1963 the question was whether the petitioner who was a jotedar of the lands before the issue of vesting notification under Estates Acquisition Act was entitled to receive the Jotedar's share of produce for 1363 B.S. His Lordship held that bargadar should pay 40 p.c. of the produce to Government.

His Lordship obviously proceeded on the footing that after the vesting being complete, the relationship of jotedar-bargadar does not subsist any longer.

**"Certificate":** Sec. 4 Public Demands Recovery Act runs as follows:—When the Certificate officer is satisfied that any public demand payable to the Collector is due, he may sign a certificate in the prescribed form, stating that the demand is due, and shall cause the certificate to be filed in his office.

In *Hara Prasad Gain* v. *Gopal Ch. Gain* [31 C.W.N. 299] a Div. Bench held that the notice under Sec. 7 of Public Demands Recovery Act was duly served though the notice bore only the lithographic signature of the certificate officer. This decision was dissented from in another Div. Bench decision *Abanindra Kumar Maiti* v. *A. K. Biswas* [58 C.W.N. 573] and it was held that the notice under Sec. 7 was invalid if it bore only a rubber stamp signature of the Certificate officer and was not signed by him in his own hand. It was held in *Abanindra*

*Maiti's* case that forms prescribed should be strictly complied with, otherwise the notice would be invalid.

In *S. C. Debi* v. *Union of India* [67 C.W.N. 759] the copy of the notice u/s. 7 P. D. R. Act bore a stamped facsimile signature of the Certificate officer, the original was duly signed by the Certificate officer himself. It was held in that Div. Bench decision that there was no illegality or irregularity because a person may sign or put his name down by means of types, or, if he uses a facsimile for signing his name, he may use it for signature. The leading judgment of *S. C. Debi's* case was delivered by BACHAWAT, J. who in an earlier decision *Jeonlal Bhutoria* v. *Union of India*, C. R. Case No. 734 of 1957 a Div. Bench composed of by J. J. BACHAWAT and RENUPADA MUKHERJEE expressed his dissent from the view taken in *Abanindra Maiti's Case*. BACHAWAT, J. observed "we have come to the conclusion that the decision in 58 C. W. N. 573 would have been otherwise had the ruling of Privy Council namely *Durga Prosad Chamaria* v. *Secy. of State* [49 C. W. N. 334] been brought to the notice of the Div. Bench".

In *S. C. Bhowmic* v. *Union of India* [65 C. W. N. 324] which again is a Div. Bench Case AMARESH ROY and BANERJEE JJ. adhered to the view expressed in *Abanindra Maiti's Case* [58 C. W. N. 573] and did not agree with the view expressed by their Lordships in *Union of India* v. *Jeonlal Bhutoria*, C. R. No. 734 of 1957. It was laid down that a certificate under the Bengal Public Demands Recovery Act which is not in form prescribed under the rule-making powers under the Act, can not be executed under the Act.

In *S. C. Devi* v. *Union of India* [67 C. W. N. 759 Div. Bench Case] BACHAWAT, J. again noticed *Hara Prosad Gain's Case* [31 C. W. N. 299] and *Abanindra Maiti's Case* [58 C. W. N. 573] and observed that in his opinion the former case was correctly decided. Their Lordships however, in *S. C. Devi's* Case distinguished the case before them from that of *Abanindra Maiti* v. *A. K. Biswas* on the ground that in *S. C. Devi's* Case the original was signed by the Certificate officer although not the copy served on the Certificate debtor and that the point regarding invalidity of notice was taken for the first time in Hon'ble Court.

So it emerges that there is a sharp conflict of opinion on the point whether the original need be signed by the Certificate officer himself by his own hand or whether his facsimile signature will do. The answer of the question obviously depends to a large extent on the true interpretation of the word 'sign' which in Sec. 3(41) of Bengal General Clauses Act has been defined as follows : "Sign with its grammatical variations and cognate expressions, shall, with reference to a person who is unable to write his name, include 'mark' with its grammatical variations and cognate expressions."

In *Seth Ottarmul* v. *Certificate Officer* [67 C.W.N. 547] it has been expressed that the conflict of decisons should in near future be settled by a larger Bench for the guidance of the administration.

**"Collector":** So far as this Act is concerned it means two classes of officers viz., (1) Collector of a district, and (2) any other officer appointed by the State Government to discharge any of the functions of a Collector under this Act.

By virtue of Sec. 3(8) Bengal General Clauses Act in Calcutta, Collector means the Collector of Calcutta and in other places it means chief officer in charge of revenue administration. By Sec. 1(2) of this Act Calcutta has been excluded from the operation of the Act.

The words "any other" officer in the section may give rise to the question whether the section is bad for excessive delegation. Sec. 38 of West Bengal Security Act of 1950 was struck down in *Khagendra Nath De* v. *Dist. Magistrate, Dinajpur* [55 C. W. N. 53]. By that section any officer or authority was delegated the power to make an externment order.

In *S. Mukherjee* v. *State of West Bengal* [64 C. W. N. 521] a provision of West Bengal Soft Coke Order, 1955 which authorised Dist. Magistrate to delegate some powers of his to any person was struck down, the provision being bad for excessive delegation and violative of fundamental rights. In *Virendra* v. *State of Punjab* [A.I.R. 1957 S.C. 896] the Govt. or any authority appointed by the Government was given the power to discharge some functions under Punjab Special Powers (Press) Act and their Lordships of Supreme Court observed—

(1) It is true that the State Government may delegate the power to any officer or persons but the fact that the power of delegation is to be exercised by the State Government itself is some safeguard against the abuse of this power of delegation.

(2) No assumption ought to be made that the State Govt. or the authority will abuse its power. To make the exercise of the power justifiable will defeat the very purpose for which the power is given. Further, even if the officer may conceivably abuse the power, what will be struck down is not the statute but the abuse of power.

The words *'any other officer appointed'* does not necessarily mean already appointed. As observed in *State of Assam* v. *Sristikar* [A.I.R. 1957 S . C. 414: 1957 S.C.A. 697: 1957 S.C.R. 295 : 1957 S.C.J. 345] it may also mean to be appointed at any further time. When a person is appointed by the Government after the date of the Act, he may immediately thereafter be described as an officer appointed by the Government.

**"Consolidation"**: In defining the word legislature has used the word *'includes'* instead of *'means'* and *'signifies'*. The word 'include' is intended obviously to be enumerative and not exhaustive, it being settled law that *'include'* is a word of enlargement [*Ramchandra* v. *A. Ammal,* A. I. R. 1964 Ker. 269]. As observed in *Banshilal* v. *Commr. S. Tax* [A. I. R. 1957 M. P. 30] it is generally used to enlarge the meaning of the words and the phrases occurring in the body of the statute, and when it is so used the words or phrases must be construed as apprehending not only such things, as they signify according to natural import, but also those things which the interpretation clause declares that they should include.

The process of re-arrangement of lands comprised in one holding or in different holdings has been given the name consolidation. But because of the fact that legislature has used the word *'includes'* in defining the word consolidation, it seems that re-arrangement of lands for any other purpose is not outside the scope of consolidation as defined in this Act.

**"Homestead"**: The definition of *"homestead"* in the Estates Acquisition Act, 1953 has been adopted in this Act. Sec. 2(*g*) of W. B. E. A. Act runs as follows :—'Homestead' means a dwelling house together with any courtyard, compound,

garden, out-house, place of worship, family grave-yard, library, office, guest house, tanks, wells, privies, latrines, drains and boundary walls annexed to or appertaining to such dwelling house.

**"Incumbrance":** With necessary modifications the definition of the word given in Section 161(a) B. T. Act has been adopted in this Act. This definition has been added by W. B. L. R. (Am.) Act, 1965.

**"Holding":** This Act recognises only one class of tenants, namely, *raiyats, i.e.*, person who hold land for the purpose of agriculture. The land so held by a *raiyat* constitutes a "holding". The land comprised in a holding must be treated as a unit for assessment of land-revenue. Unlike the "holding" under the B. T. Act an undivided share of such land will not be a holding under this Act.

**"Land":** The present Act deals exclusively with agricultural land. Hence the term "land" shall always mean agricultural land. Homesteads have been included within the meaning of "land". For "non-agricultural land" see West Bengal Non-Agricultural Tenancy Act, 1949 (W. B. Act. XX of 1949). By W. B. L. R. (Am.) Act, 1965 land comprised in a tea garden has been excluded.

**"Personal cultivation":** In the original Bill a definition of *"bonafide* cultivator" was given. On the recommendation of the Select Committee that definition has been replaced by the present definition of "personal cultivation". Cultivation by a bargadar is not personal cultivation inasmuch as the bargadar under this Act is neither a servant nor a labourer, but a creature of law.

**"Prescribed by rules":** The general power of making rules for carrying out the purposes of the Act as specified in different sections has been conferred upon the State Government by sec. 60, *post.*

**"Raiyat":** Section 2(10) which defines the term *'raiyat'* has been brought into force by notification no. 17998 L. R. dated 12. 10. 1963, on and from 22. 10. 1963.

The Act recognizes only one class of tenants namely *'raiyats'*. Holding land for the purpose of agriculture is the only

test for one's being a raiyat. User of a portion of land for purpose other than agriculture does not stand in the way of one's being a raiyat if at the inception of the tenancy the purpose is agricultural [*Radhanath* v. *Krishna Chandra,* 40 C. W. N. 322]. Real test for status is the purpose of the tenancy [*Midnapore Zemindary Co.* v. *Secy. of State,* 34 C. W. N. 1]. In *M. Z. Company* v. *Shyamlal* [15 C. W. N. 218] not only the original tenancy but also the subsequent conduct of the parties was looked into. But in that decision the lease was ambiguous.

It has been laid down in *Munshi Alauddin Ahammad* v. *Tamizuddin* [41 C. W. N. 1001 at P. 1004] where the lands are not agricultural, there can obviously be no question of the lease being for an agricultural purpose, but where the lands comprised in a lease are agricultural all that can be said is that a presumption may arise that the purpose is also agricultural, but this will not necessarily be so. To establish an agricultural purpose, apart from the agricultural character of the lands, the terms of the letting will have to be seen.

**Revenue:** The definition of revenue in Sec. 2(11) is similar to that of rent in Sec. 3(13) of Bengal Tenancy Act with one point of difference. Under B. T. Act money recoverable under any enactment for the time being in force was included within the definition "rent". But such is not the case with "revenue". Thus cess is not revenue, although it was rent [*Jogesh* v. *Ananda,* 26 C. W. N. 368].

**Agricultural and Agricultural purpose:** Agriculture in its root sense means *ager*—a field and *cultura*—cultivation, cultivation of field which of course implies expenditure of human skill and labour upon the land. The term, however, has acquired a wider significance and that is to be found in various dictionary meanings ascribed to it. The term agriculture in various dictionaries has been used both in the narrow sense of the cultivation of the field and the wider sense of comprising all activities in relation to the land including horticulture, forestry, breeding and rearing of livestock, dairying, butter and cheese making, husbandry etc. Whether the narrower or the wider sense of the term 'agriculture' should be adopted in a particular case depends not only upon the provisions of the various statutes

in which the same occurs but also upon the facts and circumstances of each case. The definition of the term in one statute does not afford a guide to the construction of the same term in another statute [*I. T. Commr.* v. *Binoy Kumar*, A.I.R. 1957 S.C. 768: 1958 S. C. R. 101; *I. T. Commr.* v. *Jyotikana Chowdhurani*, A. I. R. 1958 S. C. 19 : 1958 S. C. J. 166 ; *Tea Estate* v. *Commr. W. Tax*, 69 C. W. N. 428].

Referring to the term 'agricultural purpose' their Lordships in *I. T. Commr.* v. *Binoy Kumar* [A. I. R. 1957 S. C. 768] further observe agriculture is the basic idea underlying the expression agricultural purpose. The term agriculture connotes the entire and integrated activity of an agriculturist performed on that land in order to raise its produce and consists of such basic and essential operations which require skill and labour on the land itself, as the tilling of the soil, sowing of the seeds, planting etc. It also includes such other subsequent operations performed after the produce sprouts from the land, as weeding, digging of the soil around the growth, removal of undesirable undergrowths, tending, pruning, cutting, harvesting and marketing. But these subsequent operations, if unconnected with the basic operations cannot by themselves constitute agriculture. It is only when the land is subject to such integrated activity, it can be said to be used for agricultural purposes. See also *I. T. Commr* v. *Sundar* [A. I. R. 1950 Mad. 566].

Arable means fit for cultivation [*Abdul Jabbar* v. *State of West Bengal*, 71 C.W.N. 129 at P. 141]. Horticulture means the cultivation of garden or the science of cultivation or management of garden including flowers, fruits and vegetables [*Abdul Jabbar* v. *State of W. B.* 71 C.W.N. 129 at PP. 142-143].

**3.** *Act to override other laws etc.*—The provisions of this Act shall have effect notwithstanding anything in any other law or any custom or usage or in any contract expressed or implied inconsistent with the provisions of this Act.

**Notes**

**Commencement :** Section 3 has been brought into force in all the districts of W. Bengal by Notification No. 6346-L. Ref. D/-30. 3. 1956 with effect from 31. 3. 1956.

The section has been brought into force in the areas transferred from Bihar to W. Bengal by Bihar and W. Bengal (Transfer of Territories Act, 1956; Act 40 of 1956) with effect from 1.7.1967 by Notification No. 10732 L. Ref. d/30.3.1956.

**Scope :** This section lays down that the provisions of this Act will have overriding effect over all other laws, customs, usages and all contracts express or implied if they are inconsistent with the provisions of this Act. If the two Acts of the State legislature are inconsistent or repugnant, the latter prevails provided the repeal of the earlier enactment follows by necessary implication [*Emperor* v. *P. C. Barua*, 31 C. W. W. 765].

**Repeal by implication :** As observed in *Mathura Prosad* v. *State of Punjab* [A. I. R. 1962 S. C. 745 at 748] no repeal can be implied unless there is an express repeal of an earlier enactment by the later Act or unless two Acts cannot stand together.

It can not be assumed that the Parliament has given on the one hand which he has taken away with the other. But it is impossible to construe absolute contradictions. Consequently, if the provisions of a latter Act are so inconsistent with or repugnant to those of an earlier Act that they can not stand together the earlier stands impliedly repealed by the latter. *Leges posteriores priores contrarias abrogant ubi duae contrariae leges sunt semper antiquam obrogat nova.* [Maxwell on Interpretation of Statute, 11th. Edn. Pp. 153-154].

In *Municipal Council* v. *T. J. Joseph* [A. I. R. 1963 S.C. 1561] the law has been summed up as follows. "It is undoubtedly true that the legislature can exercise the power of repeal by necessary implication. But it is equally settled that there is a presumption against an implied repeal. Upon the assumption that the legislature enacts laws with a complete knowledge of all existing laws pertaining to the same subject the failure to add a repealing clause indicates that the intent was not to repeal existing legislation. The presumption will be rebutted if the provisions of the new Act are so inconsistent with the old one that the two cannot stand together. In *Deepchand* v. *State of U. P.* [A. I. R. 1959 S. C. 648 : 1959 S. C. A. 377] the following principles have been laid down for ascertaining

whether there is any repugnancy between the two statutes. Repugnancy exists when—

(*a*) There is a direct conflict between the two provisions ;

(*b*) When the legislature intended to lay down an exhaustive code in respect of the same subject-matter replacing the earlier law ;

(*c*) When the two laws occupy the same field.

As to implied repeal the following principles summarised from Maxwell, 11th Edn. pp. 156-162 may be stated—(a) When the latter of two general enactments are couched in negative terms, it is difficult to avoid the inference that the earlier one is impliedly repealed ; (b) When a statute contemplates in express terms that its enactments will repeal earlier Acts by their inconsistencies with them, the earlier Acts may be more readily treated as repealed ; (c) if the co-existence of two sets of provisions would be destructive of the object for which the latter was passed, the earlier would be repealed by the latter ; (d) an intention to repeal an Act may be gathered from its repugnancy to the general course of subsequent legislation.

## CHAPTER II

### *Raiyats*

**4.** *Rights of raiyat in respect of land.*—(1) Subject to the other provisions of this Act, a raiyat shall on and after the commencement of this Act be the owner of his holding and the holding shall be heritable and transferable.

(2) Nothing in sub-section (1) shall entitle a raiyat to subsoil rights.

[1] (2*A*) No *raiyat* shall—

(*a*) quarry sand, or permit any person to quarry sand, from his holding, or

(*b*) dig or use, or permit any person to dig or use, earth or clay of his holding for the manufacture of bricks or tiles, for any purpose, other than his own use, except with the previous permission in writing of the State Government and in accordance with such terms and conditions and on payment of such fees as may be prescribed.

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When a subsequent Act amends an earlier one in such a way as to incorporate itself or a part of itself, into the earlier, then the earlier Act must be read and construed (except where that would lead to a repugnancy, inconsistency or absurdity) as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to the amending Act at all [*S. V. Parulekar* v. *Dist. Magistrate, Thana.* A. I. R. 1952 S. C. 324 : 1952 S. C. A. 635 : 1952 S. C. R. 683 : 7 D. L. R. S. C. 380].

This is the law in England (vide *Craies on Statute Law, 5th Edn., Page* 207). This too is the law in America (vide *Crawford on Statutory Construction, Page* 110).

[1]The amendment has been effected by W. B. L. R. Amendment Act, 1966. Sub-sec. 2(A) as added by West Bengal Land Reforms (Am.) Act 1965, West Bengal Act XVIII of 1965—assent of the President having been published in the Calcutta Gazette, Extraordinary, D/-31. 7. 1965 stood as follows :

(2A) No raiyat shall dig or use, or permit any person to dig or use, earth or clay of his holding for the manufacture of bricks or tiles for any purpose, other than his own use, except

(2*B*) If any raiyat commits a breach of the provisions of sub-section (2*A*), the prescribed authority may, after giving in the prescribed manner an opportunity to the raiyat to show cause against the action proposed to be taken, impose upon him a fine not exceeding[2] [two thousand] rupees and, where the breach is a continuing one a further fine not exceeding[3] [two hundred] rupees for each day during which the breach continues. Such fine, if not duly paid shall be recoverable as a public demand.

(2*C*) An appeal shall lie from any order made under sub-section (2*A*) in accordance with the provisions of sections 45 and 55.

(3) No raiyat shall be entitled to own more than twenty-five acres of land, excluding the homestead :

Provided that —

(*a*) in the case of a Co-operative Farming Society, such society may own a total area as provided for in section 43 ;

(*b*) in the case of persons who have retained lands under [1][clause (*f*) in so far as it relates to orchards or under ] clauses (*h*), (*i*), and (*j*), of sub-section (1) of section 6 of the West Bengal Estates Acquisition Act, 1953 (West Bengal Act 1 of 1954) on the vesting of the estates in the State under that Act, the limit of twenty-five acres shall not apply to them, only in respect of the land so retained by them ;

(*c*) in the case of such portions of the district of Darjeeling as may be declared by notification by the State Government to be hilly portions, the limit of twenty five acre shall not apply to a raiyat,

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with the previous permission in writing of the State Government and in accordance with the terms and conditions, if any, of such permission.

[2] Substituted by W. B. L. R. (Am.) Act, 1968 for "three hundred".

[3] Substituted by ibid for "fifty".

[1] The words within square bracket added by West Bengal Land Reforms (Am.) Act 1965, West Bengal Act XVIII of 1965.

(4) Notwithstanding anything in sub-section (1), the holding of a raiyat, excluding his homestead shall be sold by the prescribed authority in the prescribed manner after such enquiry as it thinks fit and after giving the raiyat an opportunity to show cause against the action proposed to be taken if

(*a*) he has without any reasonable cause used the land comprised in the holding or a substantial part thereof for any purpose other than agriculture ;

(*b*) he has without any reasonable cause ceased to keep the land or any substantial part thereof under personal cultivation for a period of three consecutive years or more except when such land is under a usufructuary mortgage mentioned in section 7 ;

(*c*) he has without any reasonable cause failed to bring the land comprised in the holding or any substantial part thereof under personal cultivation within three consecutive years of the date on which this Act comes into force or the date on which he came into possession of such land, whichever is later :

(*d*) he has let out the whole or any part of the holding :

Provided that nothing in this sub-section shall prevent the *raiyat* from cultivating any part of his holding by a *bargadar*.

(5) On the holding of a *raiyat* being sold as aforesaid, his ownership therein shall cease and the right of the lessee, if any shall terminate and the *raiyat* shall be entitled to receive the surplus sale proceeds after deducting the expenses for conducting the sale.

**Notes**

**Commencement :**

Sub-sections (1), (2), (4) & (5) of this section have been brought into force with effect from 7. 6. 1965 by Notification No. 8144-L. Ref. d/—4. 6. 1965 in all the districts of W. Bengal except in the areas transferred from Bihar to West Bengal under Transfer of Territories Act, 1956. Sub-section (3) has been

brought into force with effect from 22. 10. 63 by notification No. 17998 L. Ref. d/—12. 10. 1963 in all the districts of West Bengal except in the areas transferred from Bihar to West Bengal under the Transfer of Territories Act, 1956.

Sub-section (2A) to (2C) have been brought into force with effect from 1. 11. 1965 by notification No. 14810 L-Ref. d/—25. 9. 1965 in all the districts of W. Bengal except the areas transferred from Bihar to W. Bengal under the Transfer of Territories Act. 1956.

**Scope :**

Sub-sections (1) and (2) of section 4 make the raiyat absolute owner of the land he holds except the sub-soil rights and also make the holding both heritable and transferable. Sub-section (2A) to (2C) were introduced into the Act by West Bengal Land Reforms Amendment Act 1965. Sub-section (2A) as introduced by Amendment Act, 1965 was later repealed by Amendment Act of 1966 (for the section as it stood prior to the repeal vide foot note under sec. 4). Present sub-section authorises a person holding land to quarry sand or permit any person to quarry sand and to dig and use earth or clay of his holding for his own purpose. If he wants to do it for any other purpose the person is to obtain written permission from the State Govt.

Sub-sec. (2B) too was amended by W.B.L.R. (Amendment) Act, 1968. Previously the maximum penalty for non-compliance was Rs. 300.00 P and where the breach was a continuing one a further fine—maximum being Rs. 50.00 P could be imposed. But now Rs. 2000.00 has been substituted by for Rs. 300.00 and Rs. 200.00 for Rs. 50.00 P. only. Thus maximum penalty of fine of Rs. 2000.00 P. can be imposed if the breach has already ceased. When the breach is a continuing one in addition to the above penalty a fine not exceeding Rs. 2000.00 P. can be imposed for each day during which the breach continued. This repeal however cannot be construed as retrospective (Vide Sec. 8 Bengal General clauses Act.

Sub-sec. (2C) provides that the order imposing penalty is appealable, the forum of appeal being the Collector of the district when the penal order has been made by any Revenue Officer

below the rank of a Collector ; when the penal order has been made by the Collector the forum of appeal is the Commissioner of the division, when the order has been made by the Commissioner appeal lies to the Member of the Board of Revenue. The time within which the appeal is required to be preferred has been enumerated in section 55 of the Act. Sub-sections (1), (2), (4), (5) are in force with effect from 7. 6. 65 in entire W. Bengal except the areas transferred from Bihar to West Bengal.

Sub-section (3) coming into force with effect from 22.10.1963 by notification no. 17998 L. Ref. dated 12.10.1963 lays down that no raiyat can hold more than 25 acres of land excluding the homestead. Proviso to sub-section (3) prescribes that the maximum limit provided in sub-section (3) shall not apply in the following cases, viz.,

(*a*) in the case of Co-operative farming society,

(*b*) in the case of persons retaining lands under section 6(1) clause (*f*) so far as it relates to orchards, clauses (*h*), (*i*) and (*j*) of West Bengal Estates Acquisition Act, and

(*c*) in the areas of Darjeeling declared by the State Govt. as hilly portions.

Sub-section (4) entitles the State Govt. to sell the land of the raiyat after giving opportunity to show cause in any of the following circumstances, viz.,

(*a*) if the land of the holding or a substantial part of it is used for non-agricultural purpose ;

(*b*) if the land or a substantial part of it is not kept under personal cultivation for three years or more ;

(*c*) if the land of the holding or a substantial part of it is not brought under personal cultivation within three consecutive years after the commencement of the Act [i.e., the coming into force of sub-section (4) of section 3] or getting possession of the land whichever is later,

(*d*) if the whole or any part of the holding is let out.

**User of the land for non-agricultural purpose :**

The words non-agricultural purpose being negative ones, the raiyat is bound to hold the land and use it for agricultural purpose.

Agriculture in its root sense means *ager* a field and *cultura*—cultivation, cultivation of field which of course implies expendi-

ture of human skill and labour upon land. The term 'agriculture' in various dictionaries has been used both in the narrower sense of cultivation of the field and the wider sense of comprising all activities in relation to the land including horticulture, forestry, breeding and rearing of livestock, dairying, butter and cheese making, husbandry etc. [*I. T. Commr.* v. *Jyotikona,* A.I.R. 1958 S. C. 19 : 1958 S. C. J. 166] See also *Tea State* v. *Commr. W. Tax* [69 C. W. N. 428.]

Grazing of cattle employed in cultivation has been held to be agricultural purpose, but not where the cattle are used for some other purpose [*Brajabasi* v. *Ramshankar,* 23 C. L. J. 638 ; *Shyam Sunder* v. *Navin,* 59 C. L. J. 23]. Stacking of agricultural produce or manure, threshing corn are agricultural purpose [*Dinanath* v. *Sashi Mohan,* 20 C. W. N. 550 ; *Ramnath* v.*Girish,* 45 C. W. N. 119]. Cultivation of tea is agricultural purpose [*Prabhat* v. *Bengal Central Bank,* 42 C. W. N. 761]. Reclamation of land is agricultural purpose [*Jagadish* v. *Lalmohan,* 13 C. L. J. 318]. Cultivation of indigo is agricultural purpose [*Surendra* v. *Harimohan,* 9 C. W. N. 87]. Lease of tanks and banks has in some cases been held to be agricultural [*Surendra* v. *Chandra Ratan,* 34 C. W. N. 1063].

Lease for building purpose and for establishing a coal depot is a lease for non-agricultural purpose [*Raniganj Coal Assocn.* v. *Jadunath,* 19 Cal. 489].

Tenancy for gathering and enjoying fruits from garden lands is neither agricultural nor horticultural [*Sailendra* v. *Coco Prior, Bandel Church,* 44 C. W. N. 582].

**Failure to cultivate without reasonable cause :**

The raiyat runs the risk of having his entire holding excepting the homestead, sold if he without reasonable cause does not keep the land or a substantial part thereof under personal cultivation within three consecutive years after section 4(4) being brought into operation.

For meaning of the word personal cultivation see section 2(8) of the Act.

Before taking the penal measure the prescribed authority is bound to ask the raiyat to show cause against the action pro-

posed. If any reasonable cause exists the raiyat cannot be so penalised.

What constitutes reasonable cause is purely a question of fact and depends upon each particular case. The words 'reasonable cause' appear in different statutes, but the definition or interpretation of one term in one statute does not afford a guide to the construction of the same term in another statute [*Guruswami* v. *State of Madras*, A. I. R. 1954 S. C. 592; *Mahidhar* v. *Banshidhar*, A. I. R. 1945 Pat. 414].

**Letting out the whole or any part of the holding :**

In the event of the raiyat's letting out the whole or any part of the holding the entire holding may be sold by the prescribed authority. Existence of reasonable cause for letting out the land cannot be pleaded in that case. If, however the raiyat allows any other person to use the holding or any part thereof as a licensee raiyat does not come under the mischief of the clause. For distinction of lease and licence see *Associated Hotels* v. *R. N. Kapoor* [A. I. R. 1959 S. C. 1262]. The question before their Lordships was whether a particular document created a lease or licence. It was observed (*a*) to ascertain whether a document creates a licence or lease, the substance of the document must be preferred to the form ;

(*b*) the real test is the intention of the parties ;

(*c*) if the document creates an interest in the property, it is a lease ; but, if it only permits another to make use of the property, of which the legal possession continues with the owner, it is a licence ;

(*d*) if under a document a party gets exclusive possession of the property, prima facie, he is considered to be a tenant ; but circumstances may be established which negative the intention to create a lease.

Whether an agreement creates between the parties a relationship of landlord and tenant or that of licensor and licensee, the decisive consideration is the intention of the parties. This intention has to be ascertained on a consideration of all relevant provisons. Exclusive possession of a person would make him a lessee [*Clubwala* v. *Fida Hossein*, A. I. R. 1965 S. C. 610 : (1964) 2 S. C. J. 448 : (1964) 6 S. C. R. 642]. The

question whether a document is a lease or licence turns on the actual intention of the parties [*Lall, B. M.* v. *Dunlop Rubber Co.*, 1968 S. C. A. 18 : A. I. R. 1968 S. C. 175 : (1967) 2 S. C. W. R 406 ; *Minarani Ghosh* v. *Daulatram Aurora*, A. I. R. 1967 Cal. 633 : 71 C. W. N. 270 : *Bhaskaran, P.* v. *Indian Iron & Steel* Co. 71 C. W. N. 302].

**Opportunity to show Cause :**

The penal action under sub-section 2B and sub-section (4) can be taken by the Government after giving to the raiyat an *opportunity to show cause*. Ordinarily the principle of natural justice is that no man can be condemned unheard. This doctrine is known as *audi alteram partem*. It is on this principle that natural justice ensures that both sides should be heard fairly and reasonably [*Kishanlal Agarwalla* v. *Collector of Land Customs*, 69 C. W. N. 864 at P. 877]. Quantum of hearing to be afforded is to be determined, however, not by a *priori* consideration but upon a consideration of circumstances of each case [*J. P. Mitra* v. *Union of India*, 71 C. W. N. 926 at P. 1012].

Proviso to sub-sec. (4) and sec. 15 expressly provide that cessation of personal cultivation or failure to bring under personal cultivation will not entail the penalty of sale so long as the holding concerned or any part of it is cultivated by a bargadar.

**4A.** *Certain restrictions on rights of raiyats in Sadar, Kalimpong and Kurseong sub-divisions of Darjeeling district.*— (1) In the Sadar sub-division, Kalimpong sub-division, and Kurseong subdivision of the district of Darjeeling, the Deputy Commissioner of the district may from time to time, give directions regarding the form of cultivation to be adopted by a raiyat in respect of his holding or prohibiting a raiyat from cutting more than one tree from his holding except with the previous permission in writing of the Deputy Commissioner or such other officer as may be authorised by the State Government in this behalf.

(2) For contravention of any of the directions given under sub-section (1), the Deputy Commissioner may after giving the defaulting raiyat an opportunity

to show cause against the action proposed to be taken, impose upon him, by order, a fine not exceeding one hundred rupees which, if not duly paid, shall be recoverable as a public demand.

(3) An appeal, if presented within thirty days from the date of the order appealed against, shall lie to the Commissioner against any order passed by the Deputy Commissioner under sub-section (2) and the decision of the Commissioner shall be final.

**Notes**

This section has been added by West Bengal Land Reforms Amendment Act, 1965, West Bengal Act XVIII of 1965.

It is applicable in three sub-divisions, namely Sadar, Kalimpong, and Kurseong of the district of Darjeeling. It has been brought into force with effect from 11. 11. 1965 by Notification No. 14810-L. Ref. dt. 25. 9. 1965.

The raiyats of those areas may be asked by reason of this section to adopt a particular form of cultivation or to refrain from cutting more than one tree of his holding except with the prior permission in writing. Such permission may be given by the Deputy Commissioner Darjeeling or by such other officer as may be authorised by the State Government.

Sub-section (2) prescribes the penalty for non-compliance with the direction given under sub-section (1), the maximum penalty being a fine of Rs. 100.00 P. It is however the Deputy Commissioner himself who can impose the penalty and he can do so only after giving to the delinquent raiyat an opportunity to show cause as to why the said raiyat shall not be dealt with under section 4 (1) of the Act.

Sub-section (3) lays down that the order imposing penalty is appealable; the time within which such appeal is to be presented is thirty days from the date of the making of the order imposing the penalty, the forum of the appeal being the Commissioner whose decision in the matter is final. The words "any order" in sub-section (3) refer to an order under sub-section (2) and as such the order of the Deputy Commissioner Derjeeling prescribing the form of cultivation to be adopted by the raiyat or the order

prohibiting the raiyat from cutting more than one tree at a time is not appealable. Similarly the order refusing the permission is not appealable under sub-section (3).

**Appellate function of the Commissioner :**

So far as the appellate function of the commissioner is concerned the function is quasi judicial and when the duty of deciding an appeal is imposed upon those whose duty it is to decide it, must act judicially. They must deal with the question referred to them without bias and they must give to each of the parties the opportunity of adequately presenting the case made [*Babar Ali Sardar* v. *State of West Bengal,* 71 C.W.N. 842 *relying on Local Govt. Board* v. *Arlidge,* 1915 A.C. 120]

When there is a right vested in the authority created by the Statute, be it *administrative* or *quasi judicial* to hear appeals or revisions it becomes its duty to hear judicially, that is to say in an objective manner, impartially after giving reasonable opportunity to the parties concerned in the dispute to place their respective cases before it [*Nagendra Nath* v. *Commr. Hills Division,* A.I.R. 1958 S.C. 398; *Laxman Purosottam* v. *State of Bombay,* A.I.R. 1964 S.C. 435; *Dwaraka Nath* v. *I.T.O.,* A.I.R. 1966 S.C. 81; *Biswambhar* v. *State of U.P.,* A.I.R. 1966 S.C. 573; *Shivaji* v. *Union of India,* A.I.R. 1960 S.C. 606; *Babur Ali & ors* v. *State of West Bengal,* 71 C.W.N. 842 at P. 845].

In considering whether a statutory body is a quasi judicial body or a mere administrative body it is to be ascertained whether the statutory authority has the duty to act judicially [*Nakkuda Ali* v. *Jayaratna,* 54 C.W.N. 883; *Xec Ayub* v. *Goa Government,* A.I.R. 1967 Goa 102 at P. 105].

As to the duty to act judicially it has been held in *Shaligram* v. *Union of India* [A.I.R. 1967 Punj. 93 at P. 102] if an authority is required to decide a lis after weighing the materials on both sides by bringing to bear a judicial approach on the subject it can be said to be under the duty to act judicially. In other words an authority is likely to be held to act in a judicial capacity if it determines litis interpartes. Even in cases where it is not required to determine issue analogous to litis interpartes it may be held under obligation to act in a judical capacity if it has to determine questions in relation to rights of individuals by

applying pre-exising legal norms to factual situations. Again an authority which is neither required to determine issues analogous to litis interpartes nor empowered or required to determine questions of legal right may nevertheless be held to act in a judicial capacity if it exercises discretionary powers which directly affect the interest of individuals and in which a policy element is absent or relatively small.

5. *Transferability of holding of a raiyat.*— (1) A transfer of the holding of a *raiyat* or a share or portion thereof shall be made by an instrument which must be registered and the registering officer shall not accept for registration any such instrument unless—

(*a*) 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

(*b*) there is tendered along with it,

(*i*) a notice giving the particulars of the transfer in the prescribed form for transmission to the prescribed authority ;

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

(2) In case of bequest of such holding or portion or share thereof, no court shall grant Probate or Letters of Administration until the applicant files in the prescribed form a notice giving particulars of the bequest together with the prescribed process fee for transmission to the prescribed authority.

(3) No Court or Revenue Officer shall confirm the sale of such a holding or portion or share thereof put to sale in execution of a decree or certificate 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 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 8 apply, there shall be filed by the transferor or trans-

feree notices giving particulars of the transfer in the prescribed form together with the process fees prescribed for the service thereof on all the co-sharers 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 Officer, as the case may be, as well as for affixing a copy on the holding.

(5) The Court, the Revenue Officer or the registering officer, as the case may be, shall transmit the notice to the authority referred to in sub-clause (*i*) of clause (*b*) of sub-section (1) who shall serve the notices on the co-sharers referred to in sub-section (4) by registered post and shall cause copies of the notice to be affixed on the holding and in Court house or in the office of the Revenue Officer, or of the registering officer, as the case may be.

*Explanation*— In this section—

(*a*) "transfer", "purchaser" and "mortgagee" include their successors in interest, and

(*b*) "transfer" does not include partition or simple or usufructuary mortgage.

**Notes**

**Scope and Commencement :**

This section has been brought into force with effect from 1. 3. 65 in all the districts of West Bengal except the areas transferred from Bihar to West Bengal under the Bihar and West Bengal (Transfer of Territories) Act 1956. Analogous to section 26 C. B. T. Act this section provides for the transferability of the holding as also the mode thereof.

**Compulsory registration of transfer :**

As laid down in *Sashi* v. *Shanker,* [54 C. W. N. 936] transfer means passage of a right from one individual to another. Such transfer may take place in three different ways. It may be by virtue of an act done by a transferor with an intention, as

in the case of a conveyance or a gift or; secondly it may be by operation of law, as in the case of forfeiture, bankruptcy, intestacy etc.; or thirdly it may be an involuntary transfer effected through court, as in execution of a decree for either enforcing a mortgage or for recovery of money due under a simple money decree. In the same line is the definition of the term as laid down in Osborn's Concise Law Dictionary, 4th Edn., Page 336. It has been stated that transfer means the passage of a right from one person to another (*i*) by virtue of an act done by the transferor with that intention as in the case of a conveyance or assignment by way of sale or gift etc.; or (*ii*) by operation of law, as in the case of forfeiture, bankruptcy, descent, or intestacy.

Partition is not a transfer, because it merely effects a change in the mode of enjoyment of property and is not an act of conveying the property from one living person to another [*Indoji Jithaji* v. *Kothapally*, 54 I. C. 146 at P. 151; *Pokhar* v. *Dulari*, A.I.R. 1930 All. 687 at P. 691]. Scope and object of partition is to convert joint possession into severalty [*Md. Hashim* v. *Hamidia Begum*, 46 C. W. N. 561 at P. 584]. This section therefore does not attract partition which has been separately dealt in section 14 of the Act. Explanation to this section specifically excludes partition, simple mortgage and usufructury mortgage from the ambit of this section.

The rule regarding compulsory registration is mandatory and the instrument would not operate as a transfer without registration. Such unregistered document cannot be used as a document of title [*Birendra* v. *Naruzzaman*, 49 C. W. N. 649]. By requiring compulsory registration of every instrument of transfer the section obviously supplements the provisions of Mahomedan Law as to *hiba* and *hiba-bil-ewaz*. Thus a gift by a Muslim raiyat in order to be a valid document must be registered [*Srimatijan* v. *Fulja*, A. I. R. 1941 Cal. 266].

A family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognising the right of the others, as they had previously asserted to it, to the portions allotted to them respectively. In case of family arrangement or family settlement no conveyance

accordingly is required [*Sadhu Madho Das* v. *Mukund Ram*, A.I.R. 1955 S.C. 481 : 1955 S.C.A. 1057]. It is, however, not for the Court to determine whether at the time of family settlement the parties had antecedent title or not. It is sufficient that the parties asserted some kind of antecedent title or semblance of title [*Kisto Chandra Mondal* v. *Mt. Anila Bala* A. I. R. 1968 Pat. 487].

An idol is a juristic person but not a living person. So a dedication of property to deity is not transfer [*Biapatrao* v. *Ramchandra*, A.I.R. 1926 Nag. 469; *Harihar Prosad* v. *Siri Guru Granth*, A.I.R. 1930 Pat. 610].

**Doctrine of part performance and unregistered documents :**

Section 53A, T. P. Act imports in India the equitable doctrine of part performance only partially. The essentials of the section are (*a*) there must be a contract to transfer immovable property; (*b*) the contract must be for consideration ; (*c*) it must be in writing signed by or on behalf of the transferor; (*d*) the terms can be ascertained from the writing; (*e*) the transferee has taken possession or is already in possession of the property; (*f*) he has done some act in furtherance of the contract and (*g*) the transferee has performed or is willing to perform his part of the contract.

If the aforesaid conditions co-exist the transferor or any person claiming under him is precluded from enforcing against the transferee or persons claiming under him any right in respect of the property.

In *Nakul* v. *Kalipada* [42 C. W. N. 660] it has been held that section 53A, T. P. Act is applicable to a transfer of an agricultural land and that a person in possession holding in pursuance of an unregistered instrument of transfer would be entitled to protect his possession as a defendant. It was contended in *Nakul's* case that section 53A., T. P. Act does not apply because the transfer of the said case was governed by 26C, B. T. Act. Repelling the contention S. K. GHOSE, J. observed "The Transfer of Property Act enacts the general law on the subject of transfer. There is nothing in this Act or in the local Act to indicate that the general provisions of the Transfer of Property Act shall not apply to agricultural leases. Where it is intended that the agricultural leases should be excluded, it is specifically provided for,

as in section 117 of the Transfer of Property Act, which itself indicates that but for such special and express provision the Transfer of Property Act would apply to agricultural holdings and there is no warrant for the proposition that the Bengal Tenancy Act excludes a defence such as is provided for by section 53A, T. P. Act. In *Manjural Hoque* v. *Mewajan Bibi,* [60 C.W.N. 714 at P. 718] P. N. Mookerjee, J. pursued the question further and observed—there the unregistered document was compulsorily registrable under sec. 12 B. T. Act, the land sought to be transferred being a part of a tenure—"Being unregistered it cannot pass title or be regarded as a valid deed of transfer in view of sec. 12, B. T. Act and, to the extent that it purports to effect transfer and confer title it must be held to be invalid and of no effect whatsoever. For purpose of proving, however, the requisite contract in writing under sec. 53A, T. P. Act or the terms thereof, there appears to be no objection in law to its reception in evidence."

Defendant's statutory right to invoke section 53A, T. P. Act, however, is limited to two conditions viz., that the contract must be in writing and that further it is available as a defence only, or to use a convenient expression, as a passive equity and not as an active equity. The defdt. can protect his possession not against the whole world but against a transferor or any person claiming under him, the latter being debarred from enforcing any right other than that expressly provided by the contract [*Nakul* v. *Kalipada,* 42 C. W. N. 630]. In a case where the plaintiff claims under a good and genuine contract of sale earlier in date to the contract of the defdt, who took his contract with the knowledge of the plaintiff's earlier title, section 53A has no application [*Hemraj* v. *Rustomji,* A. I. R. 1953 S. C. 503].

Defdt relying on section 53A, T. P. Act must plead he performed his part of the contract or is ready and willing to perform it. Failure to do so disentitles the defdt. to any such defence [*Devisahai Premraj* v. *Govindrao Balwantrao,* A.I.R. 1965 M. P. 275].

**Effective date of transfer :**

As between the transferor and the transferee the registered document takes effect from the date of its execution ; and if there

is a competition between two documents both of which are registered, the one executed earlier in point of time will prevail over the other. But as regards the third parties, the point of time at which the deed is effective, is the date of registration [*Gabardhan* v. *Gunadhar*, 44 C. W. N. 802].

Section 47 of Indian Registration Act lays down that a registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of registration.

In *Gostha Behari* v. *Raja Bala* [60 C. W. N. 57: A. I. R. 1956 Cal. 449] one J, a raiyat sold to G by registered kobala executed on 2. 1. 50, presented for registration on 30. 3. 50 but registered on 11. 6. 50. R purchased from J on 31. 3. 50. G applied for the pre-emption of R's kobala on the ground that G had become a co-sharer of the holding by virtue of section 47 Registration Act. The contention was repelled on the ground that section 47 has been construed in decided cases as limited to successive transfers of the same property and where different properties have been transferred by different instruments or where the contest is with a third party section 47 of Registration Act has no application.

**Notice to prescribed authority :**

The registering authority shall not accept for registration any document unless the sale price or value of the holding or portion or share thereof transferred is stated therein. As laid down in *Syed Abdul Hai* v. *Syed Abdul Rahaman* [39 C. W. N. 64] value of the holding includes the value of all things appurtenant to it.

Under the section the registering authority shall refuse to register the document unless (*a*) a notice giving particulars of transfer in prescribed form for transmission to prescribed authority, (*b*) process fees, accompany the document sought to be registered. These provisions of the Act are pari materia with clauses (*i*) and (*ii*) of section 26C (1) under which notice had to be served on the landlord instead of the prescribed authority. It was observed in *Maharaj Bahadur Sing* v. *Nari Molla* [40 C. W. N. 683] that as soon as the document is registered, the title to the holding passes from the transferor to

the transferee with retrospective effect from the date of execution of the conveyance; the question whether the landlord is served with the notice of the transfer is not material. It cannot be said that the transfer is complete as against the landlord only when he received the notice of transfer and his fees from the Collector.

But this view taken in *Maharaj Bahadur Sing's* case was not followed in three decisions viz., *Promode Kumar Banerjee* v. *Kusum Kumari* [43 C. W. N. 217], *Islam Khatun* v. *Ahmadur Rahaman* [1 Pakistan Law Reporter 456] and *Sarala Bala* v. *Subodh Chandra* [56 C. W. N. 4 Dacca Report 50]. In *Promode Kumar's* case Edgley, J, held that mere payment of the landlord's fees to the registering officer and performance of the other duties imposed upon the transferee do not in themselves constitute a notice to the landlord to the effect that a transfer has taken place. The principle laid down in *Islam Khatun's* case is that knowledge on the part of the landlord of the fact that there has been a transfer is essential for that transfer to be binding on him and that this relationship does not cease until the landlord has that knowledge. *Sarala Bala's* case followed *Islam Khatun's* case.

**Notice in case of probate and confirmation of sale :**

Sub-section (2) prohibits the grant of probate or letter of administration unless the requisities are complied with. Sub-section (3) places an interdict to Courts or Revenue Officers confirming the sale in execution of decree or certificate and to making absolute a decree for foreclosure of a mortgage in respect of a holding or part thereof unless notices for transmission to prescribed authority and process fee are put in.

The section does not authorise the Revenue officer to set aside the sale in the event of non-payment of the P. Fee etc. So a complete bottle-neck is likely to be caused if the notices are not filed and F. Fee not paid after the sale, for then the Revenue officer or the Court as the case may be cannot confirm the sale nor can set it aside.

**Notice of transfers attracting the right of pre-emption :**

Sub-section (4) requires that if the transfer attracts the right of pre-emption conferred by section 8 the transferor or transferee

shall file along with the document sought to be registered notices and process fees for (*a*) service of the notice on all the co-sharers of the holding who are not parties to the transfer,

(*b*) affixing a copy of notice in the registration office or the Court house or the office of the Revenue Officer,

(*c*) affixing a copy on the holding itself.

Sub-section (5) lays down that the Court, Registering Officer or Revenue Officer, as the case may be, shall transmit the notices to the prescribed authority whose duty is to (*a*) send by registered post the copies of notices to co-sharers, (*b*) to cause copies to be affixed on the holding, (*c*) to cause copies to be affixed in the Court house, or in the office of the Revenue Officer or in the Registering Officer.

In *Sarala Bala* v. *Subodh* [56 C.W.N. 4 D.R. 50] Badiuzzaman, J. lays down that registration of the deed gives rise to a presumption regarding the filing of the prescribed fees and notices. It does not empower the Court to presume service of notice.

Sub-section (5) however makes it an inflexible rule that the prescribed authority on receipt of the notices from the Reigstering Officer shall send notices by registered post to co-sharers. In this connection it may be useful to remember that by reason of section 28 of Bengal General Clauses Act where under any Act any document is required to be served by registered post, then unless a different intention appears in the statute, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post a letter containing the document unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post. By virtue of section 114 (*e*) Indian Evidence Act the Court is entitled to presume unless the contrary is proved that official acts have been regularly performed. But before the presumption under section 114 (*e*) can arise it must be proved that the act was done [*Walvekar* v. *R.*, 53 Calcutta 718 : 30 C. W. N. 713].

Under section 12 B. T. Act the Registering Officer had to refuse registration for transfer of permanent tenure by sale, gift or mortgage unless P. fee for notices were tendered along with the deed and it was the duty of the Registering Officer to transmit

the notice to Collector who was to cause the notice to be served on the landlord named in the notice.

In *Jitendra* v. *Monmohan* [34 C. W. N. 321 (P. C.)] it was observed in the absence of evidence to the contrary it will be presumed that the precedure laid down by Sections 12 and 13 was duly followed and that proper statutory notice was given.

**6.** Limitation on transfer.—(1) The State Government shall be entitled subject to the provisions of section 8 to take over, by order made in this behalf, any land owned by a *raiyat* whether as result of transfer or othewise, in excess of the limits prescribed by sub-section (3) of section 4 :

Provided that the raiyat shall have the option of choosing the land to be retained by him within such limits.

(2) In all cases where the State Government takes over any land under sub-section (1), there shall be paid to the *raiyat* as compensation an amount equal to the market value of the interest of the transferor in the land on the date of the transfer.

**Notes**

**Commencement :**

This section has been brought into force with effect from 22. 10. 1963 by Notification no 17998 L. Ref. d/- 12. 10. 1963 in all the districts of West Bengal except the areas transferred from Bihar to West Bengal under the Transfer of Territories Act, 1956.

This section puts an effective check upon accumulation of excessive land in one hand. The provision of sec. 4 (3) is mandatory and cannot be defeated by acquisition of land by a raiyat as a result of transfer or otherwise, such as, inheritance, etc. Subject to the right of pre-emption by a co-sharer or contiguous tenant, the State Government will be entitled to the excess land on payment to the raiyat of the market price thereof. In case of such acquisition of excess land by the State the raiyat will be given an option to retain land according to his choice within the limit. The provisions of this section cannot be

evaded by a member of co-operative Farming Society formed under this Act [see sub-sec. (6) of section 43, *post*].

The powers of the State Government under this section may be delegated to the prescribed authority [see sec. 53 *post*].

**7.** ***Limitation of mortgage of raiyati holdings.***— (1) A mortgage by a *raiyat* of his holding or any share thereof other than—

(*a*) a simple mortgage, or

(*b*) a usufructuary mortgage for a period not exceeding fifteen years,

shall be void.

(2) A usufructuary mortgage referred to in clause (*b*) of sub-section (1) may be redeemed at any time before the expiry of the period.

**Notes**

A simple mortgage or a usufructuary mortgage for a period not exceeding 15 years by a raiyat is allowed. Other kinds of mortgage will be void, compare sec. 26 G, B. T. Act.

This section has been brought into force in West Bengal except the areas transferred from Bihar to W. Bengal (vide Cal. Gaz. Notification No. 2798 L. Ref. dated 22. 2. 1965) with effect from 1. 3. 1965.

**Mortgage and charge, distinction between :**

A mortgage is a transfer of interest in specific immovable property while charge only secures repayment of money out of that poperty. A charge cannot be enforced against the property in the hand of a bonafide purchaser for value without notice [*Akhoy Kumar Banerjee* v. *Corporation of Calcutta,* 19 C.W.N. 37 : 21 C.L.J. 177 : 27 I.C. 261]. A mortgage does, whereas a charge does not, involve a transfer of interest in specific immovable property; mortgagee can follow the mortgaged property in the hand of a transferee, whereas a charge can be enforced against a transferee, only if it is shown that he has taken with notice of charge [*Govinda* v. *Dwaraka,* 12 C.W.N. 849].

**Simple mortgage, usufructuary mortgage meaning of :**

For the characteristics of simple mortgage see *Om Prakash* v. *Mukhtar Ahammad,* [A.I.R. 1940 Lah. 486]. There must be a loan by the mortgagee to the mortgagor to repay which the mortgagor must bind himself personally; the mortgagor shall transfer to the mortgagee the right to have the mortgaged property sold in the event of mortgagor's failure to repay the loan and the possession of the property should not be transferred to the mortgagee during the pendency of the mortgage.

For the characteristics of usufructuary mortgage see *Ramnarayan* v. *Adhin* [44 Cal. 388]. They are as follows : (*a*) there must be a loan by the mortgagee to the mortgagor; (*b*)possession of the property is delivered to the mortgagee; (*c*) the mortgagee is to get profits in lieu of interest and principal or both; (*d*) no personal liability is created by mortgage or (*e*) the mortgagee cannot sue for sale of mortgaged property for recovery of his dues.

**8.** *Right of purchase by co-sharer or contiguous tenant.*— (1) If a portion or share of a holding of a raiyat is transferred to any person other than a co-sharer in the holding, any co-sharer *raiyat* of the holding may, within three months of the service of the notice given under sub-section (5) of section 5, or any *raiyat* possessing land adjoining such holding may, within four months of the date of such transfer, apply to the Revenue Officer specially empowered by the State Government in this behalf, for transfer of the said portion or share of the holding to him, subject to the limit mentioned in sub-section (3) of section 4, on deposit of the consideration money together with a further sum of ten *per cent.* of that amount:

Provided that if a co-sharer *raiyat* and a *raiyat* possessing land adjoining such holding both apply for such transfer, the former shall have the prior right to have such portion or share of the holding transferred to him, and in such a case, the deposit made by the latter shall be refunded to him:

Provided further that as amongst *raiyats* possessing lands adjoining such holding preference shall be given to the raiyat having the longest common boundary with the land transferred.

(2) Nothing in this section shall apply to—

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

(*b*) a transfer by bequest or gift, or,

(*c*) a usufructuary mortgage mentioned in section 7, or,

(*d*) a transfer for charitable or religious purposes or both without reservation of any pecuniary benefit for any individual.

**Notes**

**Commencement and Scope :**

This section has been brought into force with effect from 22. 10. 1963 by notification no 17998 L. Ref. dated 12. 10. 1963 in all the districts of W. Bengal except the areas transferred from Bihar to W. Bengal under the Transfer of Territories Act, 1956.

This section gives a right of pre-emption to a co-sharer *raiyat* or a contiguous raiyat, which may be exercised, subject to the limits prescribed by sec. 4 (3), on deposit of the consideration money together with 10% thereof for payment to the transferee. But this right will not extend where the transferee is himself a co-sharer or where the transfer is by way of exchange, partition, bequest, gift, or usufructuary mortgage for not exceeding 15 years, or is for charitable or/and religious purposes without reservation of any pecuniary benefit for any individual. In case of competition between a co-sharer and an adjoining tenant, preference will be given to the co-sharer; and in case of competition amongst rival adjoining tenants preference will be given to one having the longest common boundary with the land transferred.

Application for purchase under this section is to be made to the Revenue Officer specially empowered by the State Government to entertain and take action upon it.

Limitation for making an application in the case of a co-sharer applicant is 3 months from the service of notice upon him,

and in the case of a contiguous *raiyat*, 4 months from the date of transfer. The difference in the periods of limitation for the two classes of applicants seems to have been made for the reason that a co-sharer will have direct knowledge of the transfer by service of notice upon him, whereas a contiguous *raiyat* will be assumed to have knowledge indirectly from the affixation of a notice on the land, adjoining his, affected by the transfer. But no positive knowledge of transfer can be imputed to him by this alone. Hence a definite starting point, irrespective of any service of notice, has been provided for the adjoining *raiyat*.

Compare sec. 26 F, B. T. Act and sec. 24, W. B. Non-Agricultural Tenancy Act, 1949 which governs right of pre-emption of non-agricultural lands.

**Origin of Pre-emption :**

Judicial opinions on the point whether pre-emption was prevalent in India from before the advent of the Muslims are not uniform. In a very old Allahabad Full Bench case [*Govinda Dayal* v. *Inaytullah*, (1885) I.L.R. 7 All. 775 (F.B.)] it was observed that pre-emption as prevalent in India is borrowed from Muhammadan law and seeing the advantage they attempted to neutralise it by an interpretation in *Mahanirvantantra*.

Sir William Macknaghten in his Principles and Precedents of Mohamedan Law (Page 14) has opined on the strength of a passage from *Mahanirvantantra* that pre-emption was recognised as a legal provision among the Hindus. But in *A. B. Sing* v. *G. Jaipuria* [1955 S.C.A. 132 : A.I.R. 1954 S.C. 417 : (1955) I. S.C.R. 70] B. K. Mukherjee, J. has criticised the view expressed by Sir William Macknaghten as incorrect on the ground that the treatise of *Mahanirvantantra* is one on mythology and that it was a recent publication. Relying on two P. C. decisions namely, *Jadulal* v. *Janki Koer* [L.R. I. A. 101] and *Digambar* v. *Ahammad* [L.R. 42 I.A. 10] his Lordship has observed that the law of pre-emption was introduced in this country by the Muhammadans. During the period of Mughal emperors the law of pre-emption was administered as a rule of common law of the land in those parts of the country which came under the domination of Muhammadan rulers, and it was applied alike to Muhammadans and Zimmees (within which Christians and Hindus

were included), no distinction being made in this respect between persons of different races and creeds. In course of time the Hindus came to adopt pre-emption as a custom. Similar view has been expressed in *Bhaurani* v. *Vaijanath* [A. I. R. 1962 S.C. 1476 at 1481].

Dr. B. N. Dutta in his Hindu Law of Inheritance has opined that right of pre-emption was absoloutely unknown in Bengal school of Hindu law. It has been improperly said that there has been an influence of Islamic law in Bengal school of Hindu law [Hindu Law of Inheritance by Dr. B. N. Dutta, P 137].

**Pre-emption : an incident of property :**

Judicial opinions until recently differed on the point whether pre-emption is an incident of property or it was a mere personal right of re-purchase. The Full Bench of Calcutta High Court in *Seikh Kudratullah* v. *Mohini Mohan* [4 B. L. R. 134] held (Norman and Macpherson, J. J. *dissenting*) that it was a mere personal right. Contrary view was expressed in Allahalad, Patna, Bombay in *Govinda Dayal* v. *Inayetullah* [I. L. R. 7 All. 775], *Achyutananda* v. *Biki* [I. L. R. 1 Pat. 578], *Dasharathilal* v. *Bai Dhondu Bai* [I. L. R. 1941 Bom. 460] which held the right of pre-emption as an incident of property.

All the divergence of Judicial opinion has been set at rest by A. B. *Singh* v. *G. Jaipuria* [A. I. R. 1954 S. C. 417 : 1955 S. C. A. 132] which overruled the Calcutta case and affirmed the view taken in Allahabad, Patna and Bombay.

Section 8 gives right of pre-emption first to co-sharers of the holding which part is analogous to section 26F, B. T. Act and then to owners of adjoining property, *i.e.*, right of pre-emption on the ground of vicinage—the owner having longest common boundary having preference.

**Section if violative of fundamental right :**

Section 8 so far as it deals with the right of pre-emption to co-sharers of holding does not infringe art. 19 (1) (*f*) Constitution of India ensuring to a citizen the right to acquire, hold and dispose of property, clause 5 of the article permitting reasonable restriction to be imposed by law on this right in the interest of general public.

In *Bhauram* v. *Baijnath* [A. I. R. 1962 S. C. 1476 at 1483] it has been observed "if an outsider is introduced as a co-sharer in a property it will make common management extremely difficult and destroy the benefits of ownership in common. The result of the law of pre-emption in favour of a co-sharer is that if sales take place the property may eventually come into the hands of one co-sharers as full owner and that would naturally be a great advantage..... The advantage arising from such a law of pre-emption are clear and in our opinion outweigh the disadvantages which the vendor may suffer on account of his inability to sell the property to whomsoever he pleases. The vendee also cannot be said to suffer much by such a law because he is merely deprived of the right of owning an undivided share of the property. On the whole it seems to us that a right of pre-emption based on co-ownership is a reasonable restriction of the right to acquire hold and dispose of property and is in the interest of general public."

So far as right of pre-emption on the ground of vicinage is concerned in *Bhauram* v. *Baijnath* [A. I. R. 1962 S. C. 1476 at 1481] it has been observed though the ostensible reason for pre-emption may be vicinage the real reason behind the law was to prevent a stranger from acquiring property in any area which has been populated by any particular fraternity or class of people. In effect therefore the law of pre-emption based on vicinage was really meant to prevent strangers *i.e.*, people belonging to different race and caste from acquiring property..... It is impossible to see such restriction as reasonable and in the interest of general public in the state of society in the present day". Their Lordships therefore struck down section 10 of Rewa State Pre-emption Act so far as it provided pre-emption on the ground of vicinage in respect of non-agricultural lands.

Relying on *Bhauram's Case* one year after, in *Baburam Chowdhury* v. *Mt. Saraswati Devi* [A. I. R. 1963 Pat. 144] it has been laid down that whatever may be the basis of the law of pre-emption in any part of the country, whether customary or statutory, the law, so far as the right of pre-emption on the ground of vicinage is concerned is unconstitutional, because the restriction that it seeks to impose upon the free power of disposal cannot be regarded as reasonable.

In *Mst. Gulab Bibi* v. *Shakuntala* [A. I. R. 1964 J. K. 82] on the footing that pre-emption on the ground of vicinage was violative of art. 19 (1) (*f*) the plaint where that right was prayed for, was sought to be amended to include right of pre-emption on the ground of easement. The prayer was allowed. In *Shant Ram* v. *Labh Singh* [A. I. R. 1965 S. C. 314] pre-emption on the ground of vicinage based on custom was held ultravires.

Be the motive of the legislature whatever may, to allow a *raiyat* to exercise the right of pre-emption on the ground of vicinage whenever there occurs a transfer of a part of his contiguous agricultural land is to put in his hand the maximum land permissible depriving others the right to hold, acquire and enjoy the property. It may be recalled that in determining the constitutionality of a statute the Court is not concerned with the motives of the legislature and whatever justification some people may feel in their criticism of political wisdom of a particular legislature or executive action, the Supreme Court cannot be called upon the embark upon the enquiry into public policy or investigate into questions of political wisdom or event to pronounce on the motives of the legislatures in enacting a law which it is otherwise competent to make [*Sardar Swarup Singh* v. *State of Punjab,* A. I. R. 1959 S. C. 860 : (1959) S. C. J. 1115].

At any rate if the provision relating to pre-emption on vicinage is held unconstitutional, the entire section cannot be struck down. It will be regarded as enforceable as to the rest. This principle is deducible from *R. M. D. C.* v. *Union of India,* [A.I.R. 1957 S. C. 628 : 1957 S. C. A. 912 : 1957 S. C. J. 593]. If the valid and invalid provisions are so inextricably mixed up that they cannot be separated from one another, then the invalidity of a portion must result in the Act in its entirety. On the other hand, if they are so distinct and separate that after striking out what is invalid, what remains is in itself a complete code independent of the rest, then it will be upheld notwithstanding that the rest has become unenforceable. See *Cooley's Constitutional Limitations,* Vol. I at Pp. 360-361; *Crawford* on *Statutory Construction,* Pp. 217-218 quoted in *R. M. D. C.* v. *Union of India* [A. I. R. 1957 S. C. 628]. See also *Basiruddin* v. *State of Bihar* [A. I. R. 1957 S. C. 645 : 1957 S. C. J. 714]. Speaking about S. 58 of Bihar Wakf Act Supreme Court held that if some sub-

sections are found violative of Constitution the other sub-sections which are intravires must not be struck down, if the parts which are ultravires are separable from the rest.

**Accrual of the right of Pre-emption :**

Right of pre-emption accrues on the transfer [*Jatindra* v. *Jetha*, 50 C. W. N. 502 F. B.], the date of accrual of the right is not the date of execution but the date of registration [*Gobardhan* v. *Gunadhar*, 44 C. W. N. 802 ; *Debendra* v. *Ganendra*, 53 C. W. N. 107]. If once the right accrues parties at their own will cannot suspend the operation of Statute. Thus in *Tarapada Karati* v. *Sudhamoy Dolui* [53 C. W. N. 678] L sold her one third share of an occupancy holding to N on August 3, 1946. Prior to the sale or at the time of sale there was an oral agreement of re-purchase. In pursuance of the agreement N sold to L on October 17. L again sold her share to some other persons on October 23 following. An application for pre-emption was made on November 8, 1946 which sought to pre-empt not the second sale nor the reconveyance to L but the original sale by L to N. It was held that condition to recovery could not operate to exclude the application for pre-emption and the petition is maintainable. This decision has been followed in *Nishikanta* v. *Jnanendra* [57 C. W. N. 253]. It was held in *Asmat Ali* v. *Mujaharlal* [52 C. W. N. 64 (S. B.)] right of pre-emption is not dependent on the notice of transfer being served on him. The right accrues as soon as the transfer is made irrespective of whether he is served with notice or not. Subsequent transfer is subject to the right of pre-emption [*Lokeman* v. *Motaleb*, 50 C. W. N. 807].

Pre-emptor must have to be a co-sharer of the holding on the date of the registration of the conveyance sought to be pre-empted. If the title deed of the pre-emptor is executed before the registration of the conveyance sought to be pre-empted but after the registration of it pre-emptor's title deed is registered, the pre-emptor will have no locus-standii [*Gostha Behari* v. *Raja Bala*, 60 C. W. N. 57 : A.I.R. 1957 Cal. 449].

Any co-sharer *raiyat* of the holding can exercise the right of pre-emption if a portion or share of the holding is transferred to any one other than a co-sharer in the holding, the time limit

within which such right is to be exercised is three months from the service of notice under sec. 5(5) of the Act. Any co-sharer *raiyat* or any *raiyat* having a land in the vicinity may apply under the section if there is a transfer except those transfers mentioned in sub-section (3). A person may be a co-sharer *raiyat* by inheritance, purchase [*Hirendra* v. *Kanaklata*, 46 C. W. N. 849] or even by a pre-emption too [*National Instrument Co.* v. *Mahendra Nath*, A.I.R. 1950 Cal. 163 : 5 D.L.R. Cal. 31].

As to the persons against whom such application can be made, under B. T. Act sec. 26F such application could not be made against such persons whose existing interest had accrued otherwise than by transfer. But that limitation is absent in sec. 8 of this Act. On the otherhand sec. 9(2) of the Act provides that right of pre-emption shall be available against the successor in-interest of a transferee.

In order to be a co-sharer of the holding the person must have some share or some fractional interest in the property constituting the holding. In *Kashinath Pal* v. *Umapada Pal* [71 C. W. N. 321] the applicant for pre-emption purchased from the widow of co-sharer who died leaving one son and one widow. It has held that the widow having not inherited any share from her deceased husband—Hindu Women's Right to property Act—having not been applicable to agricultural land—the applicant acquired no share in the holding and as such the applications was not maintainable. It was argued In *Kashinath Pal's* case (ibid) that the Federal Court decision *In re, Hindu Women's Right to Property Act*, 1937 [A. I. R. 1941 F. C. 72] laying down that Hindu Women's Right to Property Act is not applicable to agricultural lands does not hold good after the Constitution of India having been enacted. It was however held that the principle as to doctrine of eclipse[1] as laid down in *Bhikaji Narain* v. *State of M. P.* [A. I. R. 1955 S. C. 781] has no manner of

[1] Pre-Constitutional enactments so far as they infringe any of the provisions of the Constitution of India are not obliterated entirely or wiped out altogether from the statute book after the coming into force of Constitution. They exist for transaction and for enforcement of rights and liabilities accrued before the date of coming into force of Constitution. They also continued in force after the commencement of Constitution with respect to non-citizens, if the enactments offended any of the fundamental

application to Hindu Women's Right to Property Act and even after the introduction of Constitution of India the said Act is not applicable to agricultural lands.

**Vesting of the estates and the right of pre-emption :**

It has been laid down in *Nitai* v. *Sishir* [67 C. W. N. 633] that co-sharers of the holding before the vesting remain co-sharers even after and as such even after the vesting the right of a co-sharer to pre-empt is not lost. In *Dhananjoy Senapati* v. *Devendra* [67 C. W. N. 848] a share of the holding was purchased by the pre-emptee in 1953 and in 1956 Chapter VI of W. B. E. A. Act was brought into force. In the Revisional Settlement record-of right prepared subsequent to the vesting the co-sharers and the said transferee co-sharers were all recorded as co-sharers. One of the original co-sharers sought to pre-empt the transfer. It was pointed out by *Chatterjee J.* In Dhananjoy Senapati's case (ibid) that whatever interest the parties had before the vesting would be extinguished and the original right of the intermediary would be gone, the interest of the pre-emptee (before the vesting) as co-sharers of the tenancy then existing would cease, but subsequent to such vesting the persons who are deemed to be intermediaries would still be entitled to retain the land and if they retain the land they would become tenants of a new tenancy and as such the right to pre-empt is not available.

The word holding has been defined in section 2(6) as the land or lands held by a *raiyat* and treated as a unit for assessment of revenue other than the land comprised in a tea garden. *Raiyat* has been defined in section 2(10) to be a person who holds land for purpose of agriculture. It therefore follows that despite partition of the land between the *raiyats* if the same rent

rights because it is only a citizen who is entitled to fundamental right. The true position, therefore, is that the law (pre-constitutional enactments) becomes eclipsed for the time being. The effect of Constitutional amendment, if made, is to remove the shadow and to make the impugned Act free from all blemish or infirmity. The same result would follow if the inconsistent provision is itself amended so as to remove its inconsistency. The amended provision can not be challenged on the ground that inconsistent provision had become dead and so was not capable of being revived. This doctrine is technically called the doctrine of eclipse.

is payable for the lands, the *raiyats* will be co-sharers of the holding and can exercise the right of pre-emption. In *Debendra* v. *Ganendra* [53 C. W. N. 107] the question arose whether co-sharer tenants who have amicably partitioned their lands ceased to be co-sharers, irrespective of the fact whether or not the landlord recognised the partition. The question having been replied in the affirmative it was held by *G. N. Das, J.* sitting singly that after the partition as above an application for pre-emption is not maintainable. This decision must be held to be no longer a good law so far as the aforesaid proposition is concerned in view of the later Div. Bench decision *Abinash* v. *Chacradhar Khatua* [55 C. W. N. 717 : A. I. R. 1951 Cal. 499 : I. L. R. (1952) 2 Cal. 156]. *Chunder, J.* pointed out there is a distinction between a co-sharer in a property and co-sharer in the tenancy. There despite partition holding had not been split up and as such there did not arise separate holdings. It was held that application for pre-emption is maintainable.

**Deposit of pre-emption money :**

The section requires the co-sharer *raiyat* of the holding to deposit within three months of the service of notice under section 5(5) and the contiguous *raiyat* to deposit within four months of the transfer the consideration money plus ten per cent of that amount. Section 9 reserves the right of the transferee to plead that he paid any other sum and requires the pre-emptor to deposit further sum. Even if the original sum *i.e.*, consideration money plus 10 p.c. on it, disappears from Court at any time after the filing of the application, the application for pre-emption does not cease to be maintainable. In *Rakhal Das* v. *Sarala Bala* [40 C. W. N. 1182] the petitioner filed the application and also deposited the money but later the application was dismissed for default. The purchaser colluding with other opposite parties got the sum attached in execution of a money decree and withdrawn. Later the application for pre-emption was revived and it was held that despite the absence of the pre-emption money the Court should pass an order of pre-emption.

**Court's power to extend the time for deposit :**

In B. T. Act, in section 26F(2) it was laid down that application is liable to be dismissed, unless the applicant at the time

of filing the application deposits the pre-emption money. Such a clause is absent in section 8. The question whether the Court has any right to extend the time for depositing the pre-emption money was raised in *Nurul Hossein* v. *Mihilal Sk.* [A. I. R. 1948 Cal. 144]. Their Lordships conceded that the Court has always the power to grant extension of time when there is nothing to prevent it from doing so. But because of the opening words of clause (2) of section 26F their Lordships refused to hold an application for pre-emption maintainable as the money was not deposited during the filing of the application.

Since there has been omitted any provision parallel to sub-section (2) it is submitted that basis of *Nural Hossein's* case is taken away and it is within the ambit of Revenue Officer's power to grant extension of time for depositing the pre-emption money.

Sub-section (2) of section 26F, Bengal Tenancy Act stood as follows : *The application shall be dismissed unless the applicant or applicants at the time of the making it, deposit in Court the amount of consideration money or the value of the transferred portion or share of the holding, as stated in the said notice, together with compensation at the rate of ten percentum of such amount.*

Sub-section (2) of section 24 of Non-agricultural Tenancy Act lays down : *The application under sub-section* (1) *i.e., application for pre-emption of non-agricultural land, shall be dismissed unless the applicant at the time of making it deposits in court the amount of consideration money or the value of the property or the portion or share thereof transferred as stated in the notice.....together with compensation at the rate of five percentum of such amount.*

In *Prabartak Jute Mills* v. *Anila Bala* [59 C. W. N. 939] the expression *date of making of application* was interpreted to mean not the date of presentation of the petitioner under sec. 24(1) W. B. Non-agricultural Tenancy Act, but to mean the date when the Court is called upon to make an order granting or refusing pre-emption after the amount of consideration payable by the pre-emptor is adjudicated. For, there was no provision in B. T. Act for determination of the quantum of consideration in case the quantum of consideration paid was disputed. The pro-

visions of this Act in section 9(1) is *parimateria* with the provisions of W. B. Non-agricultural Tenancy Act. Under section 9(1) W. B. L. R. Act a transferee pre-emptee can prove the actual consideration paid or that he paid any other sum to annul encumbrance, if any etc. On such facts being proved the Revenue Officer is to direct the pre-emptor to deposit further sum. Thus like a case under W. B. Non-agricultural Tenancy Act, in this Act too there are two stages of pre-emption proceeding. First, the determination of the amount of consideration payable and second after such determination of the amount of consideration payable the Court is empowered to grant or refuse pre-emption. This tends to show that "making of application" does not mean the date of presentation of petition but the date when the Court is called upon to make an order either granting or refusing pre-emption after the amount of consideration money payable by the preemptor is adjudicated.[1]

**Limitation for pre-emption :**

Limitation for making an application for pre-emption in case of a co-sharer of the holding is three months from service of notice upon him, and in the case of a contiguous *raiyat* four months from the date of transfer.

If no notice is served upon a co-sharer of the holding article 181 of old Limitation Act (now taken place of by article 137 of new Limitation Act *i.e.*, Act 36 of 1963 coming into force from 1. 1. 1964) will apply and three years is the time for making an application from the date of registration [*Asmat Ali* v. *Mujaharlal*, 52 C. W. N. 64 (S.B.) ; *Radharani* v. *Atul Chandra*, 55 C.W.N. 501].

When the pre-emptor is kept from the knowledge of the sale by the fraud of the vendor, the pre-emptor may apply within 3 years from the date of the knowledge [*Radharani* v. *Atul*, A. I. R. 1952 Cal. 75 : 55 C. W. N. 501].

Section 29(2) of new Limitation Act provides that where

[1] It is permissible to ascertain the true meaning of the latter statute by comparing with the earlier statute in *perimateria* even repealed [Vide Maxwell on Interpretation of Statute, 11th Edn., P. 34 ; *Adilabad Municipality* v. *Mahadeo Seetharam*, A. I. R. 1967 A. P. 363 at P. 369].

any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule of the new Limitation Act, the provisions of section 3 (which section mentions the period prescribed in the Schedule) shall apply as if such period were period prescribed by the Schedule. Sub-section 2 of section 29 also provides that sections 4 to 24 of that Act would apply so far as special or local laws are concerned and that too subject to such modification as may be prescribed. Nevertheless running of time will not be suspended by reason of applicant's being a minor at date of the sale [*Radharani* v. *Atul*, A. I. R. 1952 Cal. 75 : 55 C. W. N. 501].

**Forum for application :**

Application under the section has got to be made to the Revenue Officer empowered on this behalf and not to the Munsifs who are the proper forum for appeal [vide section 9(6) of the Act].

By notification No. 1566 L. Ref. dated 1. 2. 64 all subdivisional officers have been appointed to perform the functions of Revenue Officers under section 8 of the Act.

Under 26F, B. T. Act which provided the right of pre-emption on the ground of one's being a co-sharer of the holding, original applications were to be presented before the Munsif having jurisdiction over the area. Sections 8 and 9 have been brought into force with effect from 22. 10. 1963.

Section 5 of W. B. Land Reforms Act has been brought into force with effect from 1. 3. 1965 ; entire Bengal Tenancy Act has been repealed with effect from 1. 11. 1965.

As to the power of a Munsif to try now an application u/s. 26F, B. T. Act for pre-emption four cases may arise.

[A] The proceedings for pre-emption pending on 22.10.63 for transfers registered prior to 22. 10. 63 can validly be continued in the Court of Munsifs, it being settled law that when the Legislature alters the right of the parties by taking away or conferring any right, its enactments, unless in clear term made applicable to pending actions does not affect them. This principle is deducible from *Bipin* v. *Mahim* [44 C. W. N. 640]. There the validity of Munsif's order in a proceeding u/s. 26F, B. T. Act was unsuccessfully challenged on the ground that the

order having been made after the repeal of section 26F, of B. T. Act of Act 1885 By Act VI of 1938, was without jurisdiction.

As to the pending actions under the Acts repealed it has been laid down in Maxwell, 9th Edn., P. 229 "When the law is altered during the pendency of an action the right of the parties are decided according to the law as it existed when the action was begun unless the new statute shows a clear intention to vary them." This principle has received statutory recognition in section 6(*e*)General Clauses Act and Section 8(*e*) Bengal General Clauses Act. Those provisions provide that unless a different intention appears the repeal of an enactment cannot affect any legal proceeding in respect of any right, privilege, obligation etc. and any such legal proceeding may be continued and enforced as if the repealing enactment had not been passed. Section 6 and Section 8 of the aforesaid Acts are on the same line as Section 38(2) of Interpretation Act of England.

Thus it has been stated that in cases of sales prior to the issue of notification on 22. 10. 1963 bringing into force section 8 of the Act a vested right to apply under section 26F, B. T. Act before Munsif accrues and this right is not taken away by the issuance of the notification dated 22. 10. 1963. [*Narendra Nath Ghosh* v. *Krishnapada Mukhoti*, 71 C. W. N. 506]

[**B**] The transfer may be registered prior to 22. 10. 1963 and the application for pre-emption may be filed after 22. 10. 63.

Whether in these cases the forum may be Munsif too in addition to the R. O. depends upon the question whether 26F, B. T. Act stood repealed by implication with effect from 22. 10. 1963 with the coming into force of sec. 8 W. B. Land Reforms Act. It may be recalled that with effect from 1. 11. 1965 sec. 26F, B. T. stands expressly repealed.

If sec. 26F, B. T. Act is deemed to have been repealed by implication with effect from 22. 10 1963 the jurisdiction of Munsif to try an application for pre-emption in original jurisdiction must be deemed to have been ousted.

This Act provides in section 59(5) for the repeal of B. T. Act. Section 59(5) did not come into force on 22. 10. 1963. Upon the assumption that the legislature enacts laws pertaining to the same subject the failure to add a repealing clause indicates that the intent was not to repeal existing legislation. The pre-

sumption will be rebutted if the provisions of the new Act are so inconsistent that they cannot stand together [*Mathura Prosad* v.*State of Punjab,* A. I.R. 1962 S. C. 745 ; *Municipal Council Palai* v. *T. Joseph,* A. I. R. 1963 S. C.-1561].

In *Hironmoyee Dassi* v. *Anil Pal* [A. I. R. 1958 Cal. 255 : 62 C. W. N. 373] section 168A, B. T. Act was held to be repealed by section 5B, W. B. E. A. Act as the two sections, it was found, could not stand together.

In *Deepchand* v. *State of U. Pradesh* [A. I. R. 1959 S. C. 648] the following principles have been laid down to ascertain the repugnancy e.g., (*a*) Whether there is any direct conflict between the provisions ;

(*b*) Whether the legislature intended to lay down an exhaustive code ;

(*c*) When the two laws occupy the same field.

Section 9 of the Act provides that the Munsif is the appellate authority. To hold that even after the coming into force of sections 8 & 9 of the Act one may be permitted to invoke the original jurisdiction of a Munsif for the trial of a pre-emption proceeding is to render the provisions of section 9 nugatory. So there seems to be a direct conflict between the two provisions. Next, three months is the time for invoking the jurisdiction of the R. O under Section 8 of the Act whereas four months is the time so far as the jurisdiction of Munsif is concerned. To hold that the power of a Munsif to try an original proceeding for pre-emption is co-extensive with that of the R. O. is to hold that the indefeasible right acquired by a transferee on the expiry of three months from the date of the transfer can safely be undone by the transfer who negligently did not press into service section 8 the Act within three months after the receipt of the notice.

Under section 26F, B. T. Act there was no provision for reimbursing a transferee making improvement for the land purchased by him and later pre-empted by the co-sharer [*Mir Bilayet* v.*Radhika,* A. I. R. 1930 Cal. 547 ; *Secy. of State* v. *Sukh Chand,* 38 C. W. N. 849; *Kishori* v. *Sudhamoyee,* A. I. R. 1952 Cal. 353 : 4 D. L. R. Cal. 168; *contra, Ajoy* v. *Sushila,* 47 C. W. N. 184]. Section 9 (1) of the Act does away with the effect of the three former decisions. Thus in the present Act the legislature attempted to lay down an exhaustive and better code.

If a pre-emptee transferee makes improvement of his holding a clever pre-emptor to avoid depositing the sum may style his application as one under section 26F, B. T. Act. Despite all the pious intention of the legislature the benefit envisaged by section 9(1) will become all along illusory if it is not held that section 26 F, B. T. Act stands impliedly repealed.

Under section 26F, B. T. Act a pre-emptor was to deposit only 10% of the consideration money whereas under section 8 of the Act he is to deposit in addition to the aforesaid sum rent, revenue, taxes etc.

Under section 26F, B. T. Act clause (2) application was liable to be dismissed unless the applicant at the time of filing the application deposited the pre-emption money. In *Nurul Hossein* v. *Mihilal Sk.* [A. I. R. 1948 Cal. 144] their Lordships conceded that the Court has always the inherent power to extend time, but by reason of clause (2) their Lordships refused to hold an application for pre-emption maintainable as the pre-emption money was not deposited during the filing of the application. There has been omitted any such provision in sections 8 & 9 of the Act and now it is permissible for a pre-emptor to invoke the inherent power to extend the time of deposit. Obviously an exhaustive and better code has been enacted in the Act.

It is therefore submitted that section 26F, B. T. Act stood impliedly repealed by the coming into force of sec. 8 of the Act.

[C] The transfer sought to be pre-empted may be before 22-10-1963 and the application for pre-emption may be after 1-11-1965 i.e., after the express repeal of entire Bengal Tenancy Act. In such a case the forum is the Munsif and the application must be one under sec. 26F, B. T. Act and not the Revenue Officer under sec. 8 of the Act [*Bidyadhar Maiti* v. *Hemanta Kumar Giri*, C. R. Case no. 3456 of 1965 decided by *P. Chatterjee*, J. on 4.5.1966]. Before *Chatterjee* J. it was contended that the application under sec. 26F, B. T. Act would not lie on three-fold grounds. Firstly, with the issuance of notification bringing into force section 8 W.B.L.R. Act the right is lost. Secondly, on 1-8-1964 Rule 4(3) of W.B.E.A. Act Rules was amended whereby section 26F, B. T. Act ceased to apply in respect of the tenancies of intermediaries, Thirdly, with effect from 1-11-1965

B. T. Act stood repealed and as such the preemptor ought to have applied under section 8 of W.B.L.R. Act and not under section 26F. B. T. Act. All the contentions were repelled by *Chtterjee, J.* on the ground that the applicant acquired a substantive right to apply under section 26F, B. T. Act and this right is not lost by alteration of law because there is nothing in section 8, or in amended Rule 4(3) W. B. E. A. Act Rules or in the notification repealing B. T. Act by bringing into force section 59(5) W. B. L. R. Act to take such right. His Lordship referred to section 8 of Bengal General Clauses Act and held that application under sec. 26F, B. T. Act was maintainable.

**Application of the provisions of the sections in respect of tranfers prior to the coming into force of section 8**

It may be found that the opening words of section 8 are as follows : *If a portion or share of a holding of a raiyat is transferred.....* Referring to the words *is transferred* occurring in the section *Chatterjee J.* in the unreported decision *Bidyadhar Maiti* v. *Hemanta Kumar Giri* [C.R. No. 3456 of 1965 decided on 4.5.1966] lays down—Section 8(a) refers to a transfer of a portion or a share of holding of a *raiyat* subsequent to the coming into force of that Act. The statute refers to a transfer after the Act came into force because the relevant pharse is *is transferred;* there is no intention to include cases of transfer which took effect before the Act came into force. In that case they would have used both present tense as well as past tense. So with respect to a transfer which had taken place before the date on which the section came into force, no right would accrue under section 8.

The decision *Biswanath Dutta* v. *Nakul Bose* [C.R. 2956 of 1965] too supports the view that in respect of the transfers prior to 22-10-1963 no application under section 8 is maintainable.

[**D**] The transfer sought to be pre-empted may be after 22-10-63. In such an eventuality there cannot be any doubt that the application for pre-emption must be one under sec. 8 of this Act before Revenue Officer only.

**Estoppel on transferee :**

A question may arise whether the transferee—O. P. can be allowed to turn round and plead that the

recitals in the notice under sec. 23 is not correct or whether he would be estopped from so pleading. In *Mohini Mohon* v. *Radha Sundari* [39 C.W.N. 1014] the transferee was held estopped from so pleading and proving that the property sold was not an occupancy holding when there was nothing to show that the landlord applying for pre-emption knew that the tenancy was not an occupancy holding. In that decision it was proved that the transferee made a representation of the fact that the tenancy was an occupancy holding and the petitioners acted on the faith of this representation.

*Malati Bala* v. *Narendra Chandra* [48 C.W.N. 269] and *Sankaracharya Mullick* v. *Sk. Sademani* [49 C.W.N. 580] lay down that a transferee is estopped from denying the truth of the recitals of the notice, but plea of estoppel can be defeated if it is shown that the pre-emptor had knowledge of the real state of affairs and the notice did not mislead him. All the cases having been considered in *Shiromoni Prosad* v. *Raghunandan* [58 C.W.N 612] it has been laid down in order to found an estoppel against person it must be proved that a representation was made by the person sought to be estopped and that the person seeking to raise the plea acted on the faith of the representation and did so to his prejudice. So, in order to estop the transferee it must be shown that notice u/s 5 of the Act contained a representation by the transferee.

**Parties to proceeding who are :**

The co-sharers of the applicant are not necessary parties to the application [*Gobardhan Bar* v. *Gunadhar Bar,* 44 C.W.N. 802], nor the transferor [*Sindhurani* v. *Ambika,* 45 C.W.N. 658]. The transferee whose right, title and interest is sought to be acquired is a necessary party, subsequent transferee is also a necessary party [*Amir Sardar* v. *Munshi Ismail,,* 51 C.W.N. 795].

If question is raised by a person other than the transferor that the purported transfer is not a real transfer but a benami one in the sense that the transferee holds the property on behalf of the transferor, the transferor ought to be made a party to the proceeding [*Balai Chandra* v. *Nibaran Chandra,* 51 C.W.N. 644].

If the opposite party in a pre-emption proceeding is a minor, a guardian-ad-litem should be appointed before an order for pre-emption is made [*Mukti Devi* v. *Manorama Devi*, 40 C.W.N. 1211].

The question who in a proceeding is a necessary party fell for decision in a case *Benares Bank Ltd.* v. *Bhagwan Das* [A.I.R. 1947 All. 18 F.B.]. These are as follows : (a) against a necessary party there must be a right of some relief in respect of the matters involved in the proceeding in question ; (b) that it must not be possible to pass an effective decree in the absence of such party. For considering the effectiveness of a decree the tests suggested is whether the decree can be executed without the presence of the party in question as regards the property sought to be decreed in favour of the claimant. This test suggested in the Allahabad Full Bench case was approved by the Supreme Court in *Deputy Commissioner, Hardoi* v. *Ram Krishna* [A.I.R. 1953 S.C. 521 at P. 526]. See also *Jivandas* v. *Smt. Narbada Bai* [A.I.R. 1959 Cal. 519] and *Badsah* v. *Board of Revenue* [A.I.R. 1962 M.P. 12 at P. 14]. When a question arises whether a party should be joined under order 1, Rule 10 C.P.C. on the footing that he is a necessary party, another test is to see if after his joinder the main evidence in the suit and the main enquiry will remain the same as before his coming in [*Mt. Bindru* v.*Sadaram*. A. I. R. 1960 J. & K. 67].

**Refund of pre-emption money :**

As held in *Nur Muhammad* v. *Seraj* [56 C.W.N. 775: A.I.R. 1953 Cal. 216] pre-emption implies an involuntary transfer and it is well known that in case of involuntary transfer the transferee takes the transfer at his own risk. There is no question of contract and there is no scope for application of the doctrine of failure of consideration. Suit for refund of pre-emption money on the ground of defect in pre-emptee's title, therefore, is not maintainable. Similarly in *Privanath* v. *Natabar* [58 C.W.N. 975] a suit for refund of pre-emption money on the ground that the transferee had not acquired-because his vendor did not have, the professed right, title and interest in the pre-empted property was held not maintainable.

In *Jahiruddin* v. *Lilamoy* [60 C.W.N. 631] while observing

that so long the pre-emption order (which includes payment of pre-emption money to the 'transferee') stands, no question of refund of the said-pre-emption money can arise, his Lordship allowed the plaintiff to recover the pre-emption money from transferee pre-emptee whose title to the pre-empted property was found by lower Court but later negatived by High Court and who withdrew the sum with full knowledge of High Court's order. The suit was treated as a suit for cancellation of the order of pre-emption. On the ground that third party's interest did not intervene and the equities were against the transferee pre-emptee the pre-emptor was allowed to recover the sum from the pre-emptee.

**Cases where the right is not available :**

Sub-section (2) enumerates the cases where the right granted by section 8 shall not become available.

It may further be pointed out that a *raiyat* already holding 25 acres cannot be allowed to pre-empt, for the effect of his pre-empting the share transferred would be to allow him to infringe section 4.

If and when a bargadar purchases the land of a *raiyat* under section 17 (2), the provisions of section 8(1) shall not be applicable by reason of section 17 (3) of the Act.

**9.** *Revenue Officer to allow the application and apportion lands in certain cases.*—(1) On the deposit mentioned in sub-section (1) of section 8 being made, the Revenue Officer shall give notice of the application to the transferee, and shall also cause a notice to be affixed on the land for the information of persons interested. On such notice being served, the transferee or any person interested may appear within the time specified in the notice and prove the consideration money paid for the transfer and other sums, if any, properly paid by him in respect of the lands including any sum paid for annulling encumbrances created prior to the date of transfer, and rent or revenue, cesses or taxes for any period. The Revenue Officer may after such enquiry as he considers necessary direct the applicant to deposit such further sum, if any, within the time specified by him and on such sum being deposited, he shall make an order that the amount of the considera-

tion money together with such other sums as are proved to have been paid by the transferee or the person interested plus ten *per cent.* of the consideration money be paid to the transferee or the person interested out of money in deposit, the remainder, if any being refunded to the applicant. The Revenue Officer shall then make a further order that the portion or share of the holding be transferred to the applicant and on such order being made, the portion or share of the holding shall vest in the applicant.

(2) When any person acquires the right, title and interest of the transferee in such holding by succession or otherwise, the right, title and interest acquired by him shall be subject to the right conferred by sub-section (1) of section 8 on a co-sharer *raiyat* or a *raiyat* possessing land adjoining the holding.

(3) In making an order under sub-section (1) in favour of more than one co-sharer *raiyat* or *raiyat* holding adjoining land, the Revenue Officer may apportion the portion or share of the holding in such manner and on such terms as he deems equitable.

(4) Where any portion or share of a holding is transferred to the applicant under sub-section (1), such applicant shall be liable to pay all arrears of revenue in respect of such portion or share of the holding that may be outstanding on the date of the order.

(5) The Revenue Officer shall send a copy of his order as modified on appeal, if any, under sub-section (6) to the prescribed authority for correction of the record-of-rights.

(6) Any person aggrieved by an order of the Revenue Officer under this section may appeal to the Munsif having jurisdiction over the area in which the land is situated, within thirty days from the date of such order and the Munsif shall send a copy of his order to the Revenue Officer. The fees to be paid by the parties and the procedure to be followed by the Munsif shall be such as may be prescribed.

## Notes

**Commencement and Scope :**

This section has been brought into force with effect from 22. 10. 1963 by Notification No. 17998-L. Ref.. d/-12. 10. 1963 in all the districts of W. Bengal except in the areas transferred from Bihar to West Bengal under Transfer of Territories Act, 1956.

The procedure in a proceeding for pre-emption has been enumerated in this section. On a deposit of the consideration stated in the deed of transfer plus 10 per cent on it, the Revenue Officer is to serve notice of the application under section 8(1) of the Act to the transferee and shall also cause a notice to be affixed on the land obviously with a view to inform the contiguous tenants about the application. The transferee may appear and may prove the consideration as also other sums paid by him in respect of the transfer. The words "*including any sum for annulling encumbrance ..... and rent or revenue cesses and taxes*" are only enumerative and not exhaustive.

It is common experience that a transferee with a view to discourage a prospective pre-emptor-co-sharer inflates consideration in the sale deed. The stated consideration is not actual. This provision will have a deterrent effect on such over valuation and false statements.

**Pre-emption against a successor of transferee :**

Under section 26F, B. T. Act an application for pre-emption against a person whose existing interest has accrued otherwise than by purchase was not maintainable [*Shantibala* v. *Madhai Kundu,* 72 C.W.N. 231]. But, such is not the law in respect of an application under sec. 8 of the Act. Thus under sub-sec (2) of sec. 9 of the Act right given under sec. 8 to a co-sharer *raiyat* or to a contiguous *raiyat* will be enforceable even when the transferred land passes in the hands of the legal representative of the transferee.

Section 8 prescribes the period of limitation for making an application under that section. Section 8 or section 9 makes no such relaxation in the case of a co-sharer other than the applicant to join in the application of his co-sharer as we find in clause (*a*) of sub-sec. (4) of sec. 26F of the Bengal Tenancy Act, 1885 which runs as follows :—"(4) (*a*) When an application has been

made under sub-section (1) any of the co-sharer tenants including the transferee, if one of them, may within the period referred to in that sub-section or *within one month of the date of application, whichever is later,* apply to join in the said application ; . . . . .". Under this Act if no application is made under the provisions of sec. 8, the right conferred by that section to purchase will be extinguished.

**Any other sum paid by the pre-emptee :**

Under section 9 (1) the transferee pre-emptee may prove that in addition to the consideration money, he paid other sums in respect of the land which obviously includes any sum spent for the improvement of the land.

Under B. T. Act there were as many as three decisions namely *Mir Bilayet Ali* v. *Radhika,* [A.I.R. 1930 Cal. 547] ; *Secy. of State* v. *Sukh Chand* [38 C.W.N. 849] and *Kishori Mohan* v. *Sudhamoyee* [A.I.R. 1952 Cal. 353 : 4 D.L.R. Cal. 168] laying down that a pre-emptee is not entitled to be reimbursed by the pre-emptor for pre-emptee's making any improvement of the land transferred to him and sought to be pre-empted by the applicant.

It was only Henderson, J. who held in *Ajoy* v. *Sushila* [47 C.W.N. 184] that the transferee was entitled to be so reimbursed. All the four decisions were single bench decisions. Section 9 (1) does away with the effect of the three former decisions.

**10.** *Consequence of an order for transfer.*—On an order under section 9 being made—

(*a*) the right, title and interest of the *raiyat* and of the transferee or of the person mentioned in sub-section (2) of section **9** who acquires any right, title and interest in the holding shall vest in the *raiyat* whose application for transfer has been allowed by the Revenue Officer or by the Munsif on appeal:

Provided that the transferee or the person mentioned in sub-section (2) of section 9 shall have the right to take away the crops which he might have grown on the land before the date of the order ;

(*b*) the *raiyat* whose application has been so allowed shall be liable for any revenue accruing from the date of the order.

## Notes

**Commencement and Scope :**

This section has been brought into force with effect from 22.10.1963 by Notification No. 17998 L. Ref. d/- 12.10.1963 in all the districts of W. Bengal except the areas transferred from Bihar to W. Bengal under Transfer of Territories Act, 1956.

The right, title and interest of both the transferor and the transferee including the latter's representative-in-interest shall vest in the pre-emptor *raiyat ;* but the transferee or his representative-in-interest will be entitled to the crops grown by him before the date of order of pre-emption. The pre-emptor shall be liable as tenant for revenue accruing from the date of the order. For his liability to pay all arrears of revenue outstanding on such date, see sec. 9 (4), *ante.*

**11.** *Diluviated lands* :—(1) If the holding of a *raiyat* or a portion of it is lost by diluvion, the revenue of the holding shall, on application made by the *raiyat* in the prescribed form to the Revenue Officer be remitted or abated by an amount which, in the opinion of the Revenue Officer, is fair.

(2) The right, title and interest of the *raiyat.* shall subsist in such holding or portion thereof during the period of loss by diluvion not exceeding twenty years and the *raiyat* shall on its reappearance at any time within that period have the right to possession thereof and be liable to pay such revenue as in the opinion of the Revenue Officer is fair.

## Notes

**Commencement and Scope :**

This section has been brought into force in entire West Bengal except the areas transferred from Bihar to West Bengal by Bihar and West Bengal (Transfer of Territories) Act, 1956 (Act 40 of 1956) with exect from 1. 11. 1965.

This section is analogous to section 86A of B. T. Act. Subsection (1) confers like section 86A (1), B. T. Act right to remission or abatement of revenue of a holding if the holding or

part of it is lost by diluvion. In order to obtain such remission or abatement of revenue the *raiyat* shall have to apply to the Revenue Officer in the prescribed form. The R. O. on enquiry shall abate or remit such revenue as he may deem fair.

Sub-section (2) refers to reformation in situ and lays down that even if the tenant obtains an abatement of revenue under sub-section (1) he will be entitled to validly assert his tenancy right in the land if it reforms in situ within 20 years from the time when it was lost by diluvion, and the *raiyat* shall get immediate possession of the land so reformed.

**Diluvion, alluvion, reformation in situ : meaning of :**

*Diluvion* means graduai erosion or submersion of the land either by a river or a sea. The land gained by alluvion is said to be an accretion to the main land to which it is annexed (vide section 12). When the land washed away by diluvion afterwards reforms on its old ascertained site, it is called, reformation in situ [*Lopez* v. *Madan Mohan*, 13 Moor's I.A. 467]. The vernacular equivalent of the term diluvion is *'sikasthi' ; sikastir payasthi* means reformation in situ and *lapta payasthi* means accretion (B. T. Act by D. Bose, since D. Basu, J., page 285).

The land which is reformation in situ is the land of the original owner and cannot be claimed by the others [*Aminaddi* v. *Tarini Chandra*, 24 C.W.N. 211].

This reformation in situ does not become an accretion to the adjoining land and cannot be claimed as accretions [*Arun Ch. Sinha* v. *Kamini Kumar*, 19 C.L.J. 272]. If the lands are reformation in situ the question whether the accretion was slow and imperceptible does not arise [*Nazir Ahammad* v. *Secy. of State*, 26 C.W.N. 913 at 915]. Claim based on reformation in situ prevails over claim based on lateral accretion [*Secy. of State* v. *Maharaja of Pithapur*, A.I.R. 1938 Mad. 470].

The principle enunciated in section 11 rests upon the doctrine that in contemplation of law land sub-merged by water is identical with the land covered by crops, the original owner being in the eye of law in constructive possession over the land.

In order to resume ownership on reappearance over the land two conditions must be fulfilled, e.g., (1) Proof of non-abandonment by the original *raiyat ;* (2) Proof of identity of the site that has appeared.

**Sudden change of course of river :**

Even in case of abrupt change in the course of a river resulting in the separation of a considerable part of the holding and joining it to another holding without destroying the identity of the land, the separated land shall still remain the property of the original owner. It is called avulsion.

**12.** *Land gained by recess of river or sea.*—Any land gained by gradual accession to a holding, whether from the recess of a river or of the sea, shall vest in the State Government and the *raiyat* who owns holding shall not be entitled to retain such land as accretion thereto.

**Notes**

**Commencement and Scope :**

This section has been brought into force in entire West Bengal except the areas transferred from Bihar to West Bengal by Bihar and West Bengal (Transfer of Territories) Act, 1956 (Act 40 of 1956) with effect from 1. 11. 1965.

This section deals with alluvial accretions of the lands. It lays down that such land shall vest in the State Government. This section can be invoked by the State Government if it is found that the accretion was gradual and imperceptible as opposed to sudden. So the provision of this section is not attracted when there is any addition of land due to sudden shifting of the river or sea.

This section has been introduced by West Bengal Land Reforms (Amendment) Act( West Bengal Act XVIII of 1965), assent of the President having been published in Calcutta Gazette Extraordinary, dated 31st July, 1965 in place of the old one which conferred on the *raiyat* the substantive right to hold such accretions as part of his holding subject to the payment of revenue reassessed on the holding. W. B. L. R. (Am.) Act virtually has repealed the old provision and re-enacted the law on the point. As laid down in *Kashibai* v. *Mahadu* [A.I.R. 1965 S.C. 703 at P. 705] a substantive right already accrued is not lost by the alteration in law unless provision is made expressly in that behalf or a necessary implication arises.

When an existing provision is amended involving curtailment or taking away of vested rights, retrospectivity cannot be given unless there are strong words on it indicating it [*Collector* v. *Habib-Ullah-Din,* A.I.R. 1967 J. & K. 44].

**13.** [*Omitted by W.B.L.R. (Am.) Act.* 1965.—*W.B. Act XVIII of* 1965]

***14.** *Partition of holding among co-sharer raiyats.*— (1) Partition of a holding among co-sharer *raiyats* owning it shall be made either by—

(*a*) a registered instrument; or

(*b*) a decree or order of a court.

(2) When partition is effected by an instrument, the registering officer shall not accept for registration any such instrument unless there is tendered along with it a notice, giving the particulars of the holding and the area of each share, and such process fee as may be prescribed, for transmission to the prescribed authority.

(3) If as a result of partition one or more shares comprise an area less than the standard area—

(*a*) the prescribed authority in a case where partition is effected by a registered instrument, or

(*b*) the court passing the decree or order for partition, shall recast the shares, excluding the homesteads of the co-sharers, so that no share is less than the standard area, and sell such shares, or when the holding comprises an area which cannot be partitioned into two or more shares, each comprising not less than the standard area, sell the entire holding to the highest bidder or bidders among the co-sharers, or failing them to other persons, and the sale proceeds shall, after deducting the expenses for conducting the sale, be paid to the co-sharers in accordance with their

* This section has been brought into force in West Bengal except the areas transferred from Bihar to West Bengal under Bihar and West Bengal (Transfer of Territories) Act, 1955, with effect from 7.6.1965 by notification No. 8144-L, Ref. dated 4.6.1965 published in Cal. Gaz. Ext. Part 1 dated 5. 6. 1965.

shares in the holding partitioned excluding the homesteads.

(4) If the holding or any share or shares thereof cannot be sold as aforesaid, the prescribed authority or the court shall report the case to the State Government and the State Government shall, by order made in this behalf take over such holding or share or shares and shall place at the disposal of the prescribed authority or the Court, as the case may be, the market value thereof for payment to the co-sharers in the manner indicated in sub-section (3).

(5) For the purpose of preventing fragmentation of holdings as a result of partition the State Government may by order made in this behalf specify an area, which in its opinion is the minimum unit for effective cultivation in the interest of agricultural production, as the standard area, and different standard areas may be specified for different localities or for different classes of land.

## Notes

**Scope :**

Partition having been exempted from the general provisions regarding transfers as contained in sec. 5, *supra,* has been specifically dealt with in this section. The wholesome provisions of this section are intended to prevent hampering of effective cultivation in the interest of agriculture. The State Government, by order made in this behalf, is to specify standard areas for different localities or for different classes of land. No share as a result of partition shall be allowed to stand when its area falls below the standard area. For checking frustration of this object it has been provided that partition of a holding among co-sharer *raiyats* shall be effected only by a registered instrument or by a decree or order of a Court. When as a result of partition the area of the share of a co-sharer falls below the standard area, the prescribed authority, in the case of partition by a registered instrument, or the Court passing a decree or order for partition shall follow the procedure prescribed in this section. The prescribed authority or the Court in that event shall

recast the shares, in such a manner that each allotment, excluding the homesteads, remains not less than the standard area. To achieve this, the prescribed authority or the Court as the case may be shall sell such shares. If the holding comprises of an area which cannot be partitioned into two or more shares, each comprising not less than the standard area, the entire holding shall be sold to the highest bidder or bidders among the co-sharers, or failing them, to other persons. The sale proceeds, after deducting the expenses for conducting the sale shall be paid to the co-sharers in proportion to their respective shares in the holding partitioned excluding the homestead.

The Court or prescribed authority as the case may be shall report to the State Government if the holding cannot be sold in the aforesaid manner. State Government shall then take over such holding or share or shares of the holding and pay compensations to the *raiyats* through the Court or prescribed authority as the case may be.

**Parties in a suit for partition :**

In a partition suit all co-sharers must be brought before the Court [*Muhammad Abjal* v. *Hafizunnesa Khatun*, A. I. R. 1926 Cal. 741 ; *Lakshmamma* v. *Someswar*, A.I.R. 1953 Hyd. 170] Even if no objection is taken by the defendant, the Court should dismiss the suit if a co-sharer is left out [*Haran Seikh* v. *Ramesh Chandra*, 25 C.W.N. 249 at P. 252 ; *Lal Muhammad* v. *Emajuddin*, A.I.R. 1964 Cal. 548 at P. 550]. An alleged benamdar is also a necessary party [*Chidambaran Chettiar* v. *Rajamlal*, A.I.R. 1955 Mad. 300]. The properties belonging not only to the parties of the partition suit but also to some other co-sharers of theirs who had got no interest in the properties under partition may be left out [*Dwijpada* v. *Bholanath*, 92 C.L.J. 77: 7 D.L.R. Cal. 186]. A person who would be entitled to a share in lieu of maintenance is not a necessary party [*Jadu Nath Sarkar & ors.* v. *Haran Chandra Sarkar & ors.*, A.I.R. 1923 Cal. 221: 36 C.L.J. 217].

# CHAPTER IIA

## Restrictions on Alienation of Land by Scheduled Tribes

[*This chapter has been brought into force in entire West Bengal except the areas transferred from Bihar to West Bengal under Bihar and W. Bengal (Transfer of Territories) Act,* 1956 *with effect from* 1. 11. 1965].

India has a composite population and according to 1951 census out of the total Indian population of 357 million there were 19 million scheduled tribes. The minority problem had an influence of high magnitude in the political and the socio-economic life of the country. It is well known that this problem led to the disruption of British India into two sovereign parts namely Indian Union and Pakistan. After this partition of India and independence much of the attention of the framers of the Constitution was engaged to explore means for safeguarding the interests of minorities (vide Constituent Assembly debate, Vol. II, Pp. 211-314). Thus Article 19(5) Constitution of India empowers the legislatures to impose restrictions on fundamental rights in Art. 19(1). (d) to (f) in the interests of scheduled tribes. Besides the fundamental rights there is Art. 46—a Directive Principle which requires the State to take special care in promoting the educational and the economic interest of the weaker sections of the people. Art. 38—another Directive Principle requires the States to promote the welfare of the people by securing a social order based on justice.

Section 13 of West Bengal Land Reforms Act was enacted obviously with an eye to Art. 46 and Art. 38 of the Constitution of India. On that section being repealed by W. B. L. R. (Amendment) Act, 1965, this Chapter analogous to Chapter VIIA, Bengal Tenancy Act has been introduced into the Act.

**14A.** *Provisions of Chapter IIA to override other provisions of this Act.*—The provisions of this Chapter shall have effect notwithstanding anything to the contrary contained elsewhere in this Act.

**14B.** *Restrictions on alienation of land by Scheduled Tribes.*—Save as provided in section 14C, any transfer by a *raiyat*, belonging to a Scheduled Tribe of his holding or part thereof shall be void.

**Notes**

Modelled on section 49 B, B. T. Act this section provides that all transfers by a member of the Scheduled Tribe except those transfers sanctioned by sec. 14C are void and nullity. The section applies if there be a transfer in violation of the provisions of Chapter IIA. The word transfer having not been defined in the Act nor in Bengal General Clauses Act the ordinary lexicon meaning of the word may be borne in mind. In Osborn's Concise Law Dictionary, 14th Edn., Page 336 transfer has been defined as the passage of a right from one person to another (*a*) by virtue of an act done by the transferor with that intention, as in the case of a conveyance or assignment by sale, gift etc. or (*b*) by operation of law, as in the case of forfeiture, bankruptcy, descent or intestacy. A transfer may be absolute or conditional, by way of security etc.

In *Sashi* v. *Shankar* [54 C. W. N. 936] it has been laid down that transfer means passage of a right from one individual to another. Such transfer may take place in three different ways. His Lordship speaks of the two ways stated above and lays down further that transfer may be an involuntary transfer too effected through court in execution of a decree for either enforcing a mortgage or for recovery of money due under a simple money decree.

**Schedule Tribes :**

Clause 25 of Art. 366 of the Constitution of India defines the expression and Art. 342 enacts the manner in which these tribes are notified. They run as follows:—

"Art. 366. *Definitions.*—In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—

* * * *

(25) 'Scheduled Tribes' means such tribes or tribal communities or parts of or groups within such tribes or tribal commu-

nities as are deemed under article 342 to be Scheduled Tribes for purposes of this Constitution :"

Articles 342 runs thus—

"Art. 342. *Scheduled Tribes.*—(1) The President may with respect to any State or Union territory, and where it is a State, after consultation with the Governor thereof, by public notification, specify the tribes or tribal communities or parts or groups within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that State or Union territory, as the case may be.

(2) Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part or a group within any tribe or tribal community, but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

The list of scheduled tribes is now contained in the Constitution (Scheduled Tribes) Order, 1950 later amended by Scheduled Castes and Scheduled Tribes (Amendment) Act, 1956, Section 41 of States Reorganisation Act, 1956 and Punjab Reorganisation Act, 1966.

The names of the Scheduled tribes in the State of West Bengal as contained in The Constitution (Scheduled Tribes) Order, 1950 were as follows : (1) Bhutia including Sherpa Toto, Dukpa, Kagatay, Tibetan and Yolma ; (2) Bhumij ; (3) Chakma ; (4) Garo ; (5) Ho ; (6)Hajung ; (7) Mal Phariya ; (8) Mech ; (9) Mru ; (10) Munda ; (11) Kora ; (12) Lepcha ; (13) Lodha or Kheria ; (14) Magh ; (15) Mahali ; (16) Negesia ; (17) Oraon ; (18) Rabha ; (19) Santal.

The Constitution (Scheduled Tribes) Order 1950 as amended by Act LXIII of 1956 runs as follows :

1. This order may be called the Constitution (Scheduled Tribes) order, 1950.

2. The tribes or tribal communities, or parts of or groups within tribes or tribal communities specified in parts I to XIV of the Schedule to this Order shall, in relation to the State to which those respectively relate be deemed to the Scheduled Tribes so far as regards members thereof residents in the locality specified in relation to them respectively in those parts of that Schedule.

3. Any reference in the Schedule to this Order to a district or other territorial division of a State shall be construct as a reference to that district or other territorial devision as existing on the 26th January, 1950.

Part VIII—West Bengal Throughout the State—(1) Bhutia (2) Lepcha, (3) Mech. (4) Mru, (5) Munda, (6) Oraon, (7) Santal.

Under Clause (2) to Article 342 Constitution of India the Scheduled Castes and Scheduled Tribes Order cannot be varied by a subsequent order or notification unless that is issued under a law made by Parliament. Modification Order made under Sectio 41, States Reorganisation Act, 1956 accordingly was hel *ultravires* and did not affect the status conferred by the Original Scheduled Castes Order, 1950 [*Naunihal Singh* v. *Kishorilal,* A. I. R. 1961 M. P. 84]. A person who belongs to a caste or tribe included in the Order made under Art. 341 or 342 (as the case may be) of the Constitution of India does not cease to be so merely by performing ceremonial functions and rites appertaining to higher castes [*Dippala* v. *Giri,* A. I. R. 1958 A. P. 724 at 735] ; or by becoming a member of Arya Samaj [*Shyam Sundar* v. *Shankar,* A. I. R. 1960 Mys. 27]. In order to belong to a Scheduled Caste or Scheduled Tribe under the relevant Orders one must either be a Hindu or a Sikh and thus where a person belonging to Sch. Tribe has made a public declaration that he has adopted the Buddhist religion, he cannot claim to be a Scheduled Tribe on the ground that his conversion was not efficacious [*Punjab Rao* v. *Meshram,* (1966) 2 S. C. A. 85].

**14C.** *Modes of transfer of land by Scheduled Tribes.*—(1) A *raiyat* belonging to a Scheduled Tribe may transfer his holding or part thereof in any one of the following ways, namely:—

(*a*) by a complete usufructuary mortgage entered into with a person belonging to the same Scheduled Tribe to which the transferor belongs for a period not exceeding seven years;

(*b*) by sale or gift to the Government for a public or charitable purpose;

(*c*) by simple mortgage to the Government or to a registered Co-operative Society;

(*d*) by gift or will to a person belonging to the same Scheduled Tribe to which the transferor belongs, when such transfer is made with the previous permission, in writing, of the Revenue Officer containing the terms of the transfer;

(*e*) by a complete usufructuary mortgage for a term not exceeding seven years to a person other than a person referred to in clause (*a*) or by sale or exchange in favour of any person when such transfer is made with the previous permission, in writing, of the Revenue Officer containing the terms of transfer.

(2) In the case of sale to a person not belonging to the Scheduled Tribe to which the transferor belongs, the Revenue Officer shall not give the permission referred to in clause (*e*) of sub-section (1) unless he is satisfied that a purchaser belonging to such Scheduled Tribe, who is willing to pay the fair market price for the land is not available. In the case of such a purchaser being available, the Revenue Officer shall, by an order in writing direct that the holding be sold to such person on payment of the price fixed by him within such time, not exceeding six months, as may be specified in the order. On the failure of such person to tender the price so fixed within the time allowed, the Revenue Officer may, on an application in this behalf, accord written permission for the sale of the holding to any other person at a price not lower than the price so fixed.

(3) A complete usufructuary mortgage referred to in sub-section (1) may be redeemed at any time before the expiry of the terms.

(4) A mortgagor under a complete usufructuary mortgage intending to redeem such mortgage before the expiry of its term or any person acting on his behalf, may make an application for redemption in such form and containing such particulars as may be prescribed to the Revenue officer. On receipt of such application the Revenue officer shall after service of notice to the mortgagee make an enquiry in the pres-

cribed manner and pass a preliminary order declaring the amount due under such mortgage to the mortgagee at the date of such order and fixing a date for payment of such amount by the mortgagor. If the mortgagor pays such amount by the date so fixed the Revenue Officer shall make a final order directing the mortgagee to restore possession of the mortgaged property and to deliver up the mortgage deed, to the mortgagor.

(5) A final order made under sub-section (4) shall be executed by the Revenue Officer in such manner as may be prescribed.

*Explanation* :—In this section "complete usufructuary mortgage" means a transfer by a *raiyat* of the right of possession in any land for the purpose of securing the payment of money or the return of grain advanced or to be advanced by way of loan upon the condition that the loan, with all interest thereon, shall be deemed to be extinguished by the profits arising from the land during the period of the mortgage.

**Notes**

Sub-section (1) clause (*a*) is analogous to section 49E, B. T. Act. Only in the following cases a transfer of a holding or part of a holding by a member of a scheduled tribe is permissible.

(*a*) A complete usufructuary mortgage (its meaning can be had in the explanation to the section) to a person of the scheduled tribe for seven years at the maximum.

(*b*) Sale or gift to Govt. for a public or charitable purpose. Gift is a transfer of existing interest in the holding or part of the holding made voluntarily without any consideration whatsoever accepted by or on behalf of the donee or in other words it means a gratuitous transfer with intention to give in praesenti.

(*c*) A simple mortgage to the Govt. or a registered Co-operative Society.

The following transfers too are permissible provided Revenue officer accords his permission in writing containing the terms of the proposed transfer :

(*a*) By a gift or will to a person belonging to scheduled tribe.

(*b*) By a complete usufructuary mortgage for seven years or less to any person not belonging to the scheduled tribe.

(*c*) By sale or exchange in favour of any person.

In case of sale to any person not belonging to scheduled tribe the Revenue officer shall accord his sanction if he is satisfied that no purchaser belonging to scheduled tribe is available and willing to pay fair market price of the land proposed to be transferred. If one such person is available the Rev. Officer shall direct that the holding be sold to such person on payment of the sum fixed by him within such time as may be specified not exceeding six months. In default of such payment being made within the specified time the Rev. Officer can accord written permission for sale to any other person provided there is an application in this behalf before him and such other person pays the price not lower than that fixed by him.

A complete usufructuary mortgage referred to in sub-section (1) can be redeemed at any time before the expiry of the term, its procedure having been provided in sub section (4).

**14D.** *No registration or recognition of transfers in contravention of section* 14C.—(1) No transfer by a *raiyat* belonging to a Scheduled Tribe shall be valid unless made by a registered instrument.

(2) No instrument of transfer made in contravention of section 14C shall be registered or in any way recognised as valid in any court exercising civil, criminal or revenue jurisdiction.

**Notes**

Modelled on section 49F (2), B. T. Act the section makes registration compulsory in case of transfer by a member of the scheduled tribe. Section 5 of the Act provides, interalia, that transfer of a holding or part of holding must be made by a registered instrument. Nevertheless section 14D has been enacted as section 14A provides that Chapter IIA will override all other chapters.

Sub-section (2) places an interdict to the instruments in contravention of the provisions of section 14C being registered

or used in any proceeding in any court exercising civil, criminal or revenue jurisdiction.

**14E.** *Power to Revenue Officer to set aside improper transfers by raiyat.*—(1) If a transfer of a holding or any portion thereof is made by a *raiyat* belonging to a Scheduled Tribe in contravention of the provisions of section 14C, or if in the case of a complete usufructuary mortgage referred to in clause (*a*) or clause (*e*) of sub-section (1) of section 14C, the transferee has continued or is in possession for more than seven years from the date of the transfer, the Revenue Officer may, of his own motion or on an application made in that behalf, and after giving the transferee an opportunity of being heard, by an order in writing, eject the transferee from such holding or part thereof:

Provided that the transferee whom it is proposed to eject has not been in continuous possession for twelve years under the transfer made in contravention of section 14C, or in the case of a complete usufructuary mortgage referred to in clause (*a*) or clause (*e*) of sub-section (1) of section 14C, for twelve years from the expiry of the period of seven years.

(2) When the Revenue Officer has passed any order under sub-section (1), he shall restore the transferred holding or part thereof to the transferor or his successor-in-interest.

**Notes**

This section analogous to section 49H, B. T. Act empowers the Revenue Officer to eject by a written order a transferee from a member of the scheduled tribe either suomotu or on an application made in that behalf in the case of a transfer in contravention of the provisions of section 14C of the Act provided the transferee has continued or is in possession for more than seven years from the date of transfer in case of complete usufructuary mortgage.

This power can be exercised in the event of transferee's being in possession beyond seven years from the date of transfer in case of a complete usufructuary mortgage in contravention of clause (*a*) or clause (*e*) of section 14C of the Act. The Reve-

nue Officer however is bound to give to the transferee in those cases opportunity of being heard.

The proviso to the section provides two limitations to the application of the section, namely (*a*) first, if the transferee be one who is not an u. mortgagee, it cannot be invoked when the age of the transferee's possession is 12 years :

(*b*) secondly, when the transferee is an u. mortgagee, the section has no application after the lapse of 12 years from the date of expiry of seven years from the date of u. mortgage.

The section further empowers the R. O. to restore the transferred land to the transferor—member of the scheduled tribe.

**Transfer : condition precedent to the power of R. O.**

Apart from the proviso referred to above, the Revenue Officer's power to eject and restore the transferred holding to the transferor—member of scheduled tribe depends upon (*a*) there being a transfer (*b*) and the transferee's being in possession for more than seven years from the date of transfer in case of u. mortgage.

Under section 49H, B. T. Act Collector could have ejected a transferee if there was a transfer in violation of the provisions of section 49H. In *Phani Dutta* v. *Banamali* [50 C. W. N. 616] it was held that the power depends upon there being a *transfer* and no other. In the same line is the decision of *Kishum Barai* v. *Huro Pandey* [A. I. R. 1949 Pat. 408 : 4 D. L. R. Pat. 120]. For the meaning of *transfer* see notes under section 5 & section 14B.

**14F.** *Restriction on the sale of raiyat's holding or any portion thereof.*— No decree or order shall be passed by any court for the sale of the holding or any portion thereof, of a *raiyat* belonging to a Scheduled Tribe nor shall any such holding be sold in execution of any decree or order.

**14G.** *Power to the Revenue Officer to settle or sell holding for realization of certificate dues.*—(1) When a certificate is filed for the recovery of an arrear of revenue or any other public demand recoverable under the Bengal Public Demands Recovery Act, 1913, in respect of the holding of a *raiyat* belonging to a Scheduled Tribe, the Certificate Officer shall, before a proclama-

tion for sale of the holding is issued in execution of the certificate, refer the case to the Revenue Officer having jurisdiction, who may in, his discretion,—

(*a*) eject the defaulting *raiyat* from his holding and put another person belonging to a Scheduled Tribe in possession of the holding for a period not exceeding seven years on payment of the amount due in respect of the certificate by him ; or

(*b*) sell the holding to a member of a Scheduled Tribe, if available, and if not available, to any other person at a fair market price to be fixed by the Revenue Officer, not being less than the amount due in respect of the certificate :

Provided that if the homestead of the defaulting *raiyat* is comprised in the holding, he shall not be ejected from such homestead under clause (*a*), nor shall such homestead be sold under clause (*b*).

(2) (*i*) If the Revenue Officer puts any person in possession of the holding under clause (*a*) of sub-section (1) for any period, the amount paid by such person shall, at the end of such period, be deemed to have been satisfied in full, and the Revenue Officer shall then restore the holding to the defaulting raiyat;

(*ii*) if the Revenue Officer sells the holding under clause (*b*) of sub-section (1), any amount that may remain out of the sale proceeds after satisfaction of the amount due in respect of the certificate shall be paid to the defaulting *raiyat*.

**Notes**

Section 4 of the Bengal Public Demands Recovery Act read with section 38 of this Act requires the Certificate Officer to file in his office a certificate[1] signed by him on being satisfied that a revenue has fallen due to the Govt. After filing such certificate in his office and before the publication of a proclamation of sale of the holding in case of a holding held by a member of a Scheduled Tribe, the Certificate officer is bound to refer the case to the R. O. having jurisdiction over the area.

[1] For case laws as to requirements of a certificate see notes under sec. 2(3) of the Act at Pp. 17-19.

The R. O. in his discretion may resort to any of the following two methods, *e.g.*,

(*a*) he may put any other person of the Scheduled Tribe in possession for seven years at the maximum on payment of the certificate debt on ejecting the defaulting *raiyat*—a member of the Scheduled Tribe. The defaulting *raiyat*, however, cannot be ejected from his homestead. (*b*) R. O. may sell the holding to any member of the Scheduled Tribe, if available ; if not, to any other person at a fair market price, it being not less than the certificate debt. Homestead constituting a part of the holding cannot be sold.

If the R. O. resorts to clause (*a*), on the expiry of the seven years the R. O. shall restore the holding to the defaulting raiyat. If the R. O. resorts to clause (*b*) the amount paid by the transferee in excess of the certificate debt shall be paid to the defaulting *raiyat*.

**14H.** *Appeal and revision.*— An appeal, if presented within thirty days from the date of the order appealed against, shall lie to the Collector of the district from any order made under sub-section (4) of section 14C or section 14G and his order shall be final :

Provided that an application for revision or modification of the order passed by the Collector on appeal shall lie to the Commissioner if made within sixty days from the date of the order :

Provided further that the provisions of section 5 of the Limitation Act, 1963, shall apply to an appeal under this section.

**Appeal to Collector and revisional application to Commissioner :**

Collector sitting in appeal or the Commissioner sitting in revision or modification is bound to hear the aggrieved party judicially that is to say in an objective manner, impartially after giving reasonable opportunity to the parties concerned in the dispute to place their respective cases before it. This principle is deducible from the following decisions [*Nagendra Nath* v. *Commr. Hills Division*, A. I. R. 1958 S. C. 398 ; *Laxman Purusottam* v. *State of Bombay*, A. I. R. 1964 S.C. 435 ; *Babur Ali* v. *State of*

*W. Bengal,* 71 C. W. N. 842 at P. 845 ; *Xec Ayub* v. *Goa Government,* A. I. R. 1967 Goa 102 at P. 105].

**141.** *Bar to suits.*— No suit shall lie in any Civil Court to vary or set aside any order passed by the Revenue Officer in any proceeding under this chapter except on the ground of fraud or want of jurisdiction.

**Notes**

This section places an interdict to Civil Court's entertaining a suit for varying or setting aside any order made under chapter IIA except when the suit is grounded on fraud or want of jurisdiction.

**Fraud :**

In general fraud is the obtaining of a material advantage by unfair or wrongful means ; it involves moral obliquity [Osborn's Concise Law Dictionary, 4th Edn., Page 149]. Two elements are necessary to constitute fraud, deceit that is to say some one is deceived and injury or loss to the same person [*Biswambhar* v. *Nilambar* 33 C. W. N. 997]. In a suit grounded on fraud the particulars of fraud are required to be stated under Order 6 Rule 4 of Civil Procedure Code. See also *Lord Jagannath* v. *Tirthananda* [A. I. R. 1952 Orissa 312 ; 8 D. L. R. Cutt. 28]. This practice must be insisted on even if no objection is taken by the party [*Bharat D. S. Ltd.* v. *Harish,* 41 C. W. N. 746]. If there be a general allegation of fraud the party alleging it cannot be allowed to lead evidence in excess of the plea [*Union of India* v. *Motilal Kamalia,* A. I. R. 1962 Pat. 384].

**Jurisdiction :**

It is the power of the court or judge to entertain an action, petition or other proceeding [Osborn's Concise Law Dictionary, 4th Edn., Page 187]. Jurisdiction is the power to hear and determine and it does not depend upon the regularity of the exercise of that power or upon the correctness of the decision pronounced, because the power to decide carries with it the power to decide rightly or wrongly. The irregular exercise of power in violation of any direction in any enactment is not want of jurisdiction [*Ishan Chandra* v. *Moomraj Khan,* 30 C. W. N. 940]. The mere fact that an order passed with jurisdiction happens to be erroneous in law or infact is no ground for interference as a wrong order can be passed with jurisdiction [*Jagajeevan* v.

*Asma Bibi,* A. I. R. 1953 T. C. 541 : 5 D. L. R. T. C. 633]. As laid down in *Khardah Co. Ltd.* v. *Raymon & Co.* [A. I. R. 1962 S. C. 1810] when the Court has no jurisdiction defdt's waiver cannot confer it, similarly plff's invitation to invoke jurisdiction when there is none cannot confer jurisdiction. In *G. K. Das* v. *Anil Bose,* [69 C. W. N. 545] the plff. filed his own plaint and invited the Court to assume jurisdiction ; the judgment being against him he assailed the jurisdiction in revision and was allowed to do it successfully. *P. B. Mukherji, J.* observed "Parties cannot by consent or by course of conduct or by inaction or action create jurisdiction in a Court where there is none under the law."[1]

This principle that the parties by their submission can not confer jurisdiction on a Court which has none has also been impressed in a Punjab case. Section 36, Punjab Land Revenue Act, 1956 never authorises a Revenue Officer to fix maintenance in a mutation proceeding. It was held that the fact that the fixation of maintenance by a Revenue Officer in a mutation proceeding was not objected to by the parties could not empower the Revenue Officer to assume such jurisdiction and the order is void [*Mahal Singh* v. *Financial Commissioner Punjab,* I.L.R. (1968) 2 Punj. 331 : 1968 Cur. L.J. 391].

It is however well settled that exclusion of the jurisidiction of Civil Courts is not to be readily inferred, unless such exclusion is either expressly or impliedly barred and that even if the jurisdiction of the Civil Court is so excluded, the Civil Courts still have the jurisdiction to examine into cases where the provisions of the Act have not been complied with or where the proceedings are taken under colour of an Act which does not apply to the facts of the case or where the tribunal has failed to act in conformity with the fundamental principles of judicial procedure [*Venkata Reddi, D.* v. *K. Subrahmanyam,* (1968) 1 Andh. L.T. 274 : (1968) 2 Andh. W.R. 192]. Thus when jurisdiction of the Civil Court to decide a point is not taken away either expressly or by implication by any of the provisions of the statutes, the jurisdistion of the Civil Court is not ousted [*Kulandai Swami, Madurai* v. *Murugayya Madurar,* A.I.R. 1969 Mad. 14 : 81 Mad. L.W. 350].

[1] For discussions on Jurisdiction see notes under section 21 at P. 131

## CHAPTER III

### *Bargadars*

**15.** *Certain safeguards for holdings cultivated by bargadars.* The provisions of clauses (*b*) and (*c*) of sub-section (4) of section 4 shall not apply to the holding of a *raiyat* or any part of it which is cultivated by a *bargadar* so long as cultivation by *bargadar* continues.

**Notes**

This section provides an exception to clauses (*b*) and (*c*) of sub-sec. (4) of sec. 4 which provide for the sale of the holding of a *raiyat* by the prescribed authority on the ground of the former's ceasing to keep or failing to bring under personal cultivation the land or a substantial part of his holding. By virtue of this section the penal provisions of those two clauses will not operate so long as personal cultivation is not possible on the ground of cultivation of the land by a *bargadar*. The *bargadar's* position in respect of that land has in effect, been made secure.

This section has been brought into force in West Bengal except the areas transferred from Bihar to West Bengal under Bihar and West Bengal (Transfer of Territories) Act, 1955, with effect from 7. 6. 1965 by notification No. 8144—L. Ref. dated 4. 6. 1965 published in Calcutta Gazette Ext. ord. Part I dated 5. 6. 1965.

**16.** *Share of produce payable by a bargadar.*— (1) The produce of any land cultivated by a *bargadar* shall be divided as between the *bargadar* and the person whose land he cultivates—

(*a*) in the proportion of 50 : 50, in a case where plough, cattle, manure and seeds necessary for cultivation are supplied by the person owning the land.

(*b*) in the proportion of 60 : 40 in all other cases.

(2) The *bargadar* shall deliver to the person whose land he cultivates the share of the produce due to him within the prescribed period and on such

delivery each party shall give to the other a receipt for the quantity of the produce received by him.

(3) The *bargadar* shall store or thresh the produce at such place as may be agreed upon by him and the owner of the land.

## Notes

**Commencement and Scope :**

Sec. 16 has come into force in all the districts of West Bengal with effect from the 31st March. 1956, (see Notification No. 6346L. Ref., d/- 30. 3. 56). By the same notification the repeal of the W. B. Bargadars Act, 1950 [see cl. (7) of sec. 59, *post*] has been given effect to as from the above mentioned date. By Act 40 of 1956 [Bihar and W. Bengal (Transfer of territories Act, 1956] certain territories later were transferred from Bihar to W. Bengal. Sec. 16 was brought into force in those territories with effect from 1. 7. 1967 by notification No. 10732-L. Ref. d/ 24. 6. 67. For the notifications see notes under sec. 1, *ante*.

This section prescribes the manner of division of the produce between the *bargadar* and the owner of the land, the time and mode of delivery of *barga* produce and the place where the produce is to be threshed. For previous law as to division of the produce, see sec. 3 of the W. B. *Bargadars* Act, 1950, where the division was primarily left to the written agreement of the parties and in the absence of such an agreement certain rules, prescribed in that section, were to be followed. This section has done away with the scope for variation of shares due to agreement of parties or local custom or usage and has adopted an uniformity of division throughout West Bengal. Where the owner of the land supplies plough, cattle, manure and seeds, he will get one-half of the produce and two-fifths in all other cases.

Section 16(2) contains, as laid down by *Banerjee*, J. in *Suresh* v. *Murari*, C. R. No. 541 of 1958 decided on 9 . 5. 58, the mandatory provision that the bargadar shall deliver to the person whose land he cultivates the share of the produce due to him within the prescribed period and on such delivery each party shall give to the other a receipt for the produce received by him. The period within which the *bargadar* is to deliver owner's share

of the crop is seven days from the date of threshing (vide Rule 3, W. B. L. R. (Bargadars) Rules, 1956).

**Delivery :**

*In Suresh* v. *Murari* [C. R. No. 541 of 1958 decided by *Banerjee, J.* on 9. 5. 58] the bargadar sent a registered letter to the jotedar asking him to be present at the threshing ground and to receive the owner's share of the produce. The letter came back with the postal mark 'refused'. His Lordship held that the word '*delivery*' carries with it the idea of tendering or sending to the person who is entitled to receive the delivery. The *bargadar* if neither tenders the paddy to the owners nor sends the same to them, cannot be said to have delivered the owner's share. His Lordship further observed "merely asking them to come at the time of threshing and to take away their share of produce was not enough".

**Bargadar's liability to deliver to intermediary whose land has vested :**

Sub-section (2) of section 16 provides that the delivery should be made to the 'person whose land he cultivates'. The expression 'whose land he cultivates' should mean owner. In *Suresh* v. *Murari* [C. R. No. 541 of 1958 decided on 9.5.58] Banerjee, J. has all along described the recepient of Jotedar's share as owner.

In *Promotha Nath Basu* v. *State of W. B. & others* [C. R. No. 829 of 1958 decided by Sen, J. on 28-1-1963] the interest of the jotedar vested but he claimed for owner's share of produce for 1363 B.S., S. K. Sen, J. held that 40% i.e., jotedar's share should be paid by the bargadar to the Govt. This unreported decision, however, was not brought to the notice of *Chatterjee, J.* in *Sudhir Chandra Manna* v. *Srish Ch. Dhara* [71 C.W.N. 838]. It was held that the Bargadar is bound to deliver bhag produce to the intermediary so long as the possession is not taken under section 10 W.B.E.A. Act even after the vesting. His Lordship proceeded on the ground that the West Bengal Estates Acquisition Act implies that the erstwhile owner would continue in possession after the vesting of estates in 1362 B.S. until possession is actually taken over by the Collector under section 10(2) of W. B. E. A. Act.

Possession of the land by the quondam owner after the vesting was not by itself unlawful. Therefore, possession of bargadar under quondam owner qua bargadar was not unlawful.

It is respectfull submitted that if this decision is pursued to logical length some unhappy results may occur. Section 16(3) provides that the Bargadar shall store or thresh the produce at the khamar agreed upon by the Bargadar and the OWNER. Then again it is only the OWNER who can press into service section 17(1)(d) of the Act or in other words none but an OWNER can invite the Court to terminate bhag cultivation of a bargadar on the ground of bonafide requirement. But, after the vesting the intermediary in possession of the land vested cannot be called OWNER be the possession taken over by the Collector under section 10(2) of W. B. E. A. Act or not. So, the decision of *Chatterjee, J.* in *Sudhir Chandra Manna's* case would go to create two classes of jotedars having a Bargadar under him namely one class who can press into service all the relevant sections of Chapter III and another class who cannot invoke section 16(3) or/and section 17(1) (d) of W. B. L. R. Act. Thus no bargadar can enter into any agreement relating to place of threshing with those intermediaries who only possess the vested land having no ownership or title thereto.

**Delivery of share of produce :**

The word 'produce' indicates that the bargadar is bound to deliver the share of the crop he produces on the land he cultivates qua bhagchasi or bargadar. Rule 3 of West Bengal Land Reforms (Bargadars) Rules lays down that the bargadar is bound to deliver such crop within seven days from the date of threshing.

A question may arise whether in respect of crops which need not be threshed there can be any valid barga settlement. In *Jatindra* v. *Rashmoni* [67 C. W. N. 934] the provisions of W. B. L. R. Act were held applicable in case of betel-leave cultivation. In *Golam Rabbani* v. *Tazehar* [69 C. W. N. 463] while observing that *jhinga* and *banana* can come within the Act, *P. B. Mukherjee J.* laid down the agricultural produce which can be stored can also come within section 16(3) of the Act.

It may be useful to remember in this connection that cardinal rule in regard to making rules is that they must be *legi fidei rationi consona* and therefore all regulations which are

contrary or repugnant to statutes under which they are made are ineffective [*News Papers Ltd.* v. *State Industrial Tribunal,* A. I. R. 1957 S. C. 532 : 1957 S. C. A. 390].

*In Central Bank of India* v. *Their Workmen* [A. I. R. 1960 S. C. 12 : 1960 S. C. A. 454] S. K. Das, J. considered the effect of Rule 5 of Banking Companies Rules which are statutory rules like the rules of this Act. It has been laid down if a rule goes beyond what the section contemplates, the rule must yield to the statute. Similar view has been expressed *in Narsing Das* v. *Chogelal* [43 C. W. N. 613].

But in *Dale's case* [L. R. 6 Q. B. D. 376 (1811) *Brett, L. J.* has observed "I am of opinion that the rules and orders have statutory authority, for not only is the authority given to certain persons by statute to draw them up, but it is provided that they shall be laid before the Parliament for a certain time and if not objected to binding." [1]

Section 60(2), it may be recalled, provides that the rules shall have effect as if they have been incorporated in this Act.

Section 16(2) provides that exchange of receipts is mandatory. Each party is under an obligation to issue to the other on such delivery receipts of the crops.

Section 16(3) which provides that it is the imperative duty of the bargadar to store and thresh the produce at the agreed *Khamar* uses the expression 'owner of the land.' The words seem to indicate the person whose land the bargadar cultivates as also the person who owns the land where storing and threshing are to be made. If the jotedar and the bargadar agree to store and thresh at a place belonging to a third person who does not concede to the agreement, such agreement cannot obviously be implemented, it being contrary to law.

[1] In England when the power to make rules, regulations or other sub-ordinate legislations or to confirm or approve orders is conferred on His Majesty in Council or any Minister of Crown by Statutory Instruments Act, 1946 or any other enactment passed after the commencement of Statutory Instruments Act, 1946, the document by which such power is exercised in called Statutory Instrument. Section 4 of Statutory Instruments Act, may provide that such Statutory Instrument should be laid before the Parliament and if not objected to within forty days from its being laid before the Parliament, as binding.

**16A.** *Bargadar's title to recover his share in certain cases* : If the produce of any land cultivated by a *bargadar* is harvested and taken away, or if such produce after it is harvested by the *bargadar* is taken away, forcibly or otherwise, by the owner of such land, the *bargadar* shall be entitled to recover from such owner the share of the produce due to him or its money value.

**Notes**

This section has been added by section 3 of W. B. Land Reforms (Amendment) Act, 1968 published in Gazette of India, Extra-ord. Part II dated March 26, 1968.

**Bargadar's power to recover share of produce forcibly harveted by owner :**

In the unreported decision *Sreekanta Joddar* v. *Phani Bhusan Baidya* [C. R. No. 821 of 1965] decided by *P. N. Mukherjee, J.* on 1. 7. 1965 the question arose whether a bargadar can successfully maintain an application for division against the owner. The question was answered in the affirmative. It has been laid down that application for any of the reliefs under section 18(1) of the Act can be made both by the bargadar and the owner. Obviously if there is something inherent in the nature of the reliefs which would not be appropriate for the bargadar, as possibly, in normal and ordinary circumstances in the case of section 18(1) (b), which speaks of termination of cultivation by the bargadar, it might have been contended that no application for such relief would lie at the instance of the bargadar.

So far as delivery is concerned, the word "delivery" has been used in section 16(2) of the Act and it means delivery by a bargadar to the owner. Since the same interpretation is to be given to the same expression used in the statute at two or more places unless context requires otherwise [*Raghubans Naraian* v. *Govt. of U. P.*, A. I. R. 1967 S. C. 465 ; *Modi S. W. Mills* v. *State of Punjab*, A. I. R. 1967 Punj. 216] and it is at all extents reasonable to presume that the same meaning is implied by the user of the same expression in every part of the Act [Maxwell's Interpretation of Statutes, 11th. Edn., Pages 311-312]. Thus *delivery* occurring in sec. 18(1)(a) of the Act means delivery by the bargadar to the owner and not the converse. So a barga-

dar could not resort to a proceeding under sec. 18(1) (a) when an owner forcibly takes away produce from the bargadar. To obviate the difficulty sec. 16A has been enacted and the bar is removed.

**17.** *Termination of cultivation by bargadar.*—(1) No person shall be entitled to terminate cultivation of his land by a *bargadar* except in execution of an order, made by such officer or authority as the State Government may appoint, on one or more of the following grounds :—

(*a*) that the *bargadar* has without any reasonable cause failed to cultivate the land, or has neglected to cultivate it properly, or has used it for any purpose other than agriculture ;

(*b*) that the land is not cultivated by the *bargadar* personally :

(*c*) that the *bargadar* has contravened any provisions of this Act :

(*d*) that the person owning the land requires it *bonafide* for bringing it under personal cultivation :

Provided that in a case covered by clause (*d*), when the quantity of land owned by such person is in excess of such area as may be specified by the State Government by order made in this behalf, he shall be entitled to terminate cultivation by a *bargadar* of only so much land which together with any land under his personal cultivation does not exceed two-thirds of the total quantity of land excluding homestead, owned by him.

*Explanation*—For purposes of clause (*b*), a *bargadar* who cultivates the land with the help of members of his family shall be deemed to cultivate it personally.

(2) If a person fails to bring under personal cultivation any land, the cultivation of which by a *bargadar* has been terminated by him under clause (*d*) of sub-section (1) or allows such land to be cultivated by some other *bargadar* within two years of the date of such termination, the prescribed authority shall sell

it, on such terms and conditions as may be prescribed regarding the payment of the price, to the *bargadar* who was evicted under clause (*d*) of sub-section (1), and if such *bargadar* is unwilling to take the land at the market value or for any other reason, the land may be sold to other persons and the surplus sale-proceeds, if any, after deducting the expenses of the sale, shall be paid to such person.

(3) The provisions of section 8 shall not apply to any land purchased by a *bargadar* under sub-section (2) of this section.

(4) No *bargadar* shall be entitled to cultivate more than twenty-five acres of land. In computing this area, any land owned by the *bargadar* as well as the land cultivated by him as a *bargadar* shall be taken into account.

(5) If a *bargadar* cultivates land in excess of twenty-five acres, the share of the produce due to him as a *bargadar* in respect of the land in excess of twenty-five acres shall be forfeited to the State Government by order made in this behalf by a Revenue Officer.

## Notes

**Commencement**

This section except sub-sec. (3) has been brought into force in all the districts of West Bengal with effect from 31. 3. 56 ; vide Notification No. 6346L. Ref., d/-30. 3. 56.

Sub-section (3) has been brought into force with effect from 12. 12. 1963 by Notification No. 20818 L. Ref. d/-9.12.1963. Entire section 17 except sub-sec. (3) has been brought into force in the territories transferred from Bihar to W. Bengal under Transfer of Territories Act, 1956, by Notification No. 10732 L. Ref. d/-24. 6. 1967.

**Scope :**

As the section stands a *bargadar* may be evicted from the land for any or more of the following grounds, namely :—

(*a*) (*i*) his failure to cultivate the land ; (*ii*) his negligence in proper cultivation ; (*iii*) use of the land by him for non-agricultural purposes ;

(*b*) his failure to cultivate the land personally;

(*c*) contravention by him of the provisions of this Act ;

(*d*) *bonafide* requirement by the owner for bringing the land under personal cultivation.

**Impact of sec. 21A on this section :**

Newly added section 21A inserted by West Bengal Ordinance no III of 1969 with effect from 7th April, 1969 has rendered nugatory the effect of this section for the time being. Under section 21A all proceedings including one in appeal under section 19 and one in execution, for termination of barga cultivation pending on 7th April, 1969 or to be pending in future are to be stayed till the expiry of the aforesaid Ordinance.

**Section 17 : if ultravires :**

Section 17 of the Act is parallel to sec. 5 of W. B. Bargadars Act, 1950. It provided that the owner of the land cultivated by a bargadar shall be entitled to terminate cultivation on certain grounds and further sec. 5 of W. B. Bargadars Act provided that cultivation of any land by a bargadar shall not be terminated except under the order of a Board.

Art. 19(1) (*f*) of the Constitution of India gives the citizens the right to hold, acquire and dispose of property. It was argued in *Ramhari* v. *Nilmoni* [56 C. W. N. 325] that sec. 5 of Bargadars Act was violative of Art. 19(1) (*f*) of Constitution as it imposed an unreasonable restriction. The question was replied in the negative.

**Termination of barga cultivation ; grounds of :**

User of the land for any purpose other than agriculture is a ground for termination of barga cultivation. For meaning of the expression agricultural purpose see *I. T. Commissioner* v. *Binoy Bhusan Saha Roy* [A. I. R. 1957 S. C. 768 : 1958 S. C. R. 101]: *I. T. Commr.* v. *Jyoti Kana Chowdhurani* [A. I. R. 1958 S. C. 19 : 1958 S. C. J. 166]. Grazing of cattle employed in cultivation has been held to be agricultural purpose, but not where the cattle are used not for agricultural purpose, but for other purposes [*Brajabasi* v. *Ram Shankar*, 23 C. L. J. 638 ; *Shyam Sunder* v.

*Navin*, 59 C. L. J. 23]. Stacking agricultural produce or manure, threshing corn are agricultural purposes [*Dinanath* v. *Sashi Mohan*, 20 C. W. N. 550 ; *Ramnath* v. *Girish*, 45 C. W. N. 119]. Cultivation of tea is agricultural purpose [*Probhat* v. *Bengal Central Bank*, 42 C. W. N. 761]. Reclamation of land is agricultural purpose [*Jagadish v. Lalmohan*, 13 C. L. J. 318].

User of land as an air field, the land being previously an agricultural land is not an agricultural purpose [*Krishna Rao* v.*Third W. Tax Officer*, A. I. R. 1963 Mys. 111].

Failure by the bargadar to cultivate the land personally is also a ground for termination of barga cultivation. The definition of the word *'personal cultivation'* given in sec. 2 (8) of the Act has no application in sec. 17(1) (*b*) for, sec. 2(8) contemplates the case of personal cultivation by a person of his own land on his own account. Bargadar's cultivation with the help of the members of his family, however, is his personal cultivation by reason of explanation to sub-sec. (1).

Sec. 17(1) (*c*) provides that for contravention of provisions of the Act the bargadar is liable to be ordered to be ejected. Sec. 16(2) read with Rule 3 of the W. B. L. R. (Bargadars) Rules, 1956 provides that within seven days from the date of threshing the bargadar is bound to deliver the owner's share to the person whose land he cultivates. For failure to do so obviously the bargadar is liable to be ordered to be evicted. Sub-section (2*A*) of section 18 introduced by W. B. L. R. (*Am.*) Act, 1965 with retrospective effect however provides that the bargadar is not liable to be ejected if the withholding of the owner's share is caused by any doubt or uncertainty on the question whether the land has vested in the State or has been retained by the person claiming the share.

Sub-section (2*B*) introduced by W. B. L.R. (*Am.*) Act, 1965 provides that when the order of ejectment has been made for default of one year the officer or authority shall give to the bargadar an opportunity to deliver the crop to the owner within the time specified in sub-section. If the bargadar complies with the order he will not be evicted any further.

**Bargadar liable to be evicted for non-delivery of crop :**

In *Nitya Gopal Bar & others* v. *Rathindra Kr. Dinda*, [C. R. No. 4365-4374 of 1962 decided by *S. K. Sen, J.* on 16. 1. 1963]

it was argued that the defaulting bargadars might be condoned and the penalty provided in sec. 17(1) (c) might not be levied on them because the bargadars withheld the jotedar's share of the produce because of a bonafide belief that the lands of the jotedars had vested in the State Govt. and there was no deliberate or malicious withholding of jotedar's share. Repelling the contention His Lordship observed that so long the relationship of jotedar and bargadar continues and the Collector has not taken actual possession of excess land under the provisions of W. B. E. A. Act the bargadar is bound to deliver the jotedar's share of crop. Sub-sec. (2*A*) to sec. 18 introduced by W.B.L.R. (*Am.*) Act 1965 however provides now that default due to bonafide belief that land has vested shall be condoned and the bargadar shall be allowed to deliver share crop to the person entitled to the same instead of being evicted.

In the aforesaid unreported decision *S. K. Sen, J.* further held that the bargadar cannot be heard to say that because he has filed an application under sec. 5A of Estates Acquisition Act, he is entitled to withhold delivery of the crops. In *Suresh* v. *Murari* [C. R. No. 541 of 1958 decided on 9. 5. 1958] it was held that mere asking the owner to come to receive owner's share does not absolve the bargadar from the penalty of sec. 17(1) (*c*) if he defaults.

The discussions on the question of bargadar's liability for default in delivery of owner's share of crop or for contravention of any other provisions of this statute has been rendered academic by Section 21A inserted with effect from 7th April, 1969 by ordinance No. III of 1969. Under Section 21A all proceedings including one in appeal and one in execution, for termination of barga cultivation pending on 7th April, 1969 or to be pending in future are liable to be stayed till the expiry of ordinance aforesaid.

**Simultaneous prayers for delivery and termination :**

In *Krishna Das Garai* v. *Ban Behari Pal* [C. R. No. 3043 of 1958] *P. N. Mookherjee, J.* sitting singly held that for contravention of sec. 16(2) statute appeared to have provided two remedies, namely, (*i*) order of Board for delivery of the produce and (*ii*) order of eviction under clause (c) of sec. 17(1) and when the jotedar has chosen one of the remedies he must be held to

have made his election and therefore can not fall back on other remedy.

This decision has been overruled in *Kausar Ali* v. *Saukat Ali* [68 C. W. N. 601] *D. Basu, J.* has observed that there are no negative words in sec. 17(1) and sec. 18(1) for which it may be said that the owner of the land shall not have two remedies for default in delivering the share. *Banerjee, J.* has observed that by asking for termination of cultivation by a defaulting bargadar, the person whose land the bargadar was cultivating does not forfeit his right to the share of produce, lawfully due to him. There is no element of election involved in such a case. His Lordship further observed that there may however, be cases where a person has by his conduct, clearly expressed an election. A person who at first merely desires decision of a dispute over delivery of produce against a bargadar, institutes proceedings u/s. 18 of the Act, obtains an order in his favour, takes benefit of the order, and realises the share of the produce may be said to have confined himself to one of the remedies under the Act.

Sec. 17(1) (d) provides that for bonafide requirement by the owner of bringing the land under personal cultivation the bargadar may be evicted. But clause (*d*) can be invoked if the owner can show (*a*) that he requires the land, (*b*) that the requirement is bonafide, and (*c*) that he requires it to bring it under personal cultivation.

The operation of clause (*d*) of sub-sec. 17(1) is not unrestricted. The State Govt. has specified seven and half acres as the area for the purpose of this proviso (vide notification No. 10058 L. Ref. dated 6. 6. 1956 published in Cal. Gaz. Ext. Ord. Part I, (page 1380) : When the land owned by an owner exceeds this area, he will be entitled to exercise his right of termination of barga cultivation only to that extent which, together with his other land under personal cultivation, does not exceed two thirds of the total quantity of land, excluding his homestead, owned by him.

**Bonafide requirement :**

The word in this Act, it may be recalled is not desire but require. This involves something more than a mere wish and it involves an element of need [*Rekhab* v. *J. R. D' Cruz*, 26 C.

W. N. 499]. In *Sri Naresh alias Narendra* v. *Kanailal Chowdhury*. [56 C. W. N. 480] *Chunder*, J. sitting singly has held that the expression bonafide required 'involves an element of *must have* which is not present in case of desire.' His Lordship further observed that the word 'bonafide' has got to be interpreted in the light of the definition of "in good faith" given in Bengal General Clauses Act. "In good faith" according to that Act means honestly and without negligence. As stated in *Subhadra* v. *Sunder* [A. I. R. 1965 Punj. 188] bonafide means in good faith or genuinely. It conveys absence of intent to deceive.

In *Nagendra Nath Gupta* v. *Mohit Kumari* [59 C. W. N. 984] the meaning of the word 'require' fell for decision. *Lahiri*, J. held that the word "requires" refers to an objective state of things whereas the word "desire" is more appropriate to describe the subjective state of landlord's mind. In *Bhutal Singh* v. *Ganendra Kumar* [84 C. L. J. 157] too, it was held that the word "require" involves an element of need.

Sec. 17(2) embodies a penal clause in so far as it provides that an owner who having obtained an order u/s. 17(1) (*d*) and recovering khas possession on evicting the bargadar will fail to bring under personal cultivation such land or allows the land to be cultivated by some other bargadar will be visited with the penalty prescribed in the sub-section. The authority prescribed by the State Government who must be the authority appointed to decide dispute under sec. 18 [vide Rule 5 (1), W. B. L. R. Rules] in that event shall determine the market value of the land and then make an offer to the evicted bargadar to purchase the land at such price. If the bargadar is unable to pay the price at a time but accepts the offer of sale to him provisions should be made in the order for sale allowing him to make the payment in equal annual instalments not exceeding ten with interest at 3⅛p.c. per annum to be paid on such dates as may be specified in the order. But the first instalment to be paid has got to be paid at a date not later than the day of Baisakh next following the date of the order [vide Rule 35(3) of W. B. L. R. (Bargadars) Rules 1956].

On payment of the price at a time or the first instalment, the prescribed authority aforesaid shall make an order to the effect that land has been transferred to the bargadar by sale and on such order being made the land shall vest in the bargadar

with effect from 1st. day of Baisakh next following the date of order [vide Rule 5(4) W. B. L. R. (Bargadars) Rules.].

Rule 5(6) provides the procedure where the evicted bargadar shall decline to accept the offer of sale. In that event the land should be sold in the manner provided in the rule, and the surplus sale procceds after deducting the expenses of sale should be paid to the person whose land has been sold.

Sec. 8 of the Act has become operative by virtue of notification No. 17998 L. R. dated 10.10.1963 on and from 22.10.1963 in all the districts of West Bengal except the areas transferred from Bihar to West Bengal by Transfer of Territories Act 1956. Sec. 8 deals with right of pre-emption, and is analogous to sec. 26F, B. T. Act. Sec. 17(3), however provides that provisions of sec. 8 shall not apply to any land purchased by the evicted bargadar u/s. 17(2).

Sub-sec.(4) limits the quantity of land to 25 acres to be cultivated by a bargadar in any capacity whatsover, that is to say. either as bargadar when he has no land of his own or partly as bargadar and partly as an owner. When he contravenes this provision, i.e., when he cultivates land exceeding 25 acres in area, he will be deprived of the share of produce to him as bargadar of the excess area and this produce shall be forfeited to the State Govt. under sub-sec. (5). The forfeiture will not be automatic but it will be enforceable only when an order of forfeiture is made by a Revenue Officer.

18. *Jurisdiction to decide certain disputes.*—(1) Every dispute between a *bargadar* and the person whose land he cultivates in respect of any of the following matters, namely :—

(*a*) division or delivery of the produce,

[1](*aa*) recovery of produce under section 16A,

(*b*) termination of cultivation by the bargadar,

(*c*) place of storing or threshing the produce,

shall be decided by such officer or authority as the State Government may appoint.

[1] This clause has been added by W. B. L. R. (Am.) Act 1968 sec. 4 published in Gazette of India Ext. Ord. Part II d/-March 26. 1968

Provided that no application for decision of any dispute in respect of delivery of the produce referred to in clause (*a*) shall be entertained unless such application is presented to the officer or authority within two years from the date on which the delivery of the produce falls due.

(2) If in deciding any dispute referred to in sub-section (1), any question arises as to whether a person is a bargadar or not and to whom the share of the produce is deliverable, such question shall be determined by the officer or authority mentioned in sub-section (1).

(2A) If in deciding any question referred to in sub-section (2), the officer or authority mentioned in that sub-section finds that any default in the delivery of the share of the produce is due to doubt or uncertainty on the question whether the land in respect of which the share of the produce is claimed has vested in the State or has been retained under the West Bengal Estates Acquisition Act, 1953, by the person claiming the share, such officer or authority shall instead of terminating cultivation of the land by the bargadar on the ground of default, allow him time to deliver the share of the produce due to the person entitled thereto or to pay the price thereof by annual instalments not exceeding four, the first of such instalments being deliverable or payable on a date not later than the first day of *Chaitra* next following the date of the order.

(2B) If in deciding any dispute referred to in clause (*b*) of sub-section (1),the officer or authority mentioned in that sub-section makes any order terminating cultivation by a bargadar on the ground of default in the delivery of the share of the produce for one year only, such officer or authority shall, at the time of making such order, direct the bargadar to deliver the share of the produce or pay the price thereof to the person whose land he cultivates by the first day of *Chaitra* of the year next following

the year in respect of which default was made or, where such order is made after such date, by the first day of *Chaitra* next following the date of such order, and no such order shall be executed if the share of the produce or the price thereof is so delivered or paid by the bargadar by such date as so directed.

(3) The decision of any dispute referred to in clause (*a*) of sub-section (1) shall specify the money value of the share of the produce to be delivered, which shall be payable in default of delivery of such share.

[1](3A) The decision of any dispute referred to in clause (*a*) of sub-section (1) shall specify the quantity of the produce recoverable from the owner by the bagadar as his share and also its money value which shall be payable by the owner in default of delivery of such quantity of produce.

(4) For the removal of doubt it is hereby declared that notwithstanding any decision of any court to the contrary, any order under clause (*a*) of sub-section (1), specifying the money value of the share of the produce to be delivered payable in default of delivery of such share, made before the commencement of the West Bengal Land Reforms (Amendment) Act, 1962, shall be deemed to be and to have always been validly made as if that Act had come into force when such order was made.

(5) If the decision of any dispute referred to in clause (*a*) of sub-section (1) given before the commencement of the West Bengal Land Reforms (Amendment) Act, 1962, does not specify the money value of the share of the produce to be delivered, the bargadar or the person whose land is cultivated by the bargadar or the successor-in-interest of such person may within ninety days from the commence-

[1] This sub-section has been added by sec. 4 W. B Land Reforms (Am.) Act, 1968 published in Gazette of India Extra-ord. Part II d/-March 26, 1968.

ment of the West Bengal Land Reforms (Amendment) Act, 1965, make an application before the officer or authority who decided the dispute or his or its successor for review of the decision for the purpose of specifying the money value of the share of the produce to be delivered payable in default of delivery of such share.

(6) Upon receipt of such application the officer or authority shall, after giving the parties to the dispute an opportunity of being heard and adducing evidence, pass an order specifying the money value of the share of the produce to be delivered, which shall be payable in default of delivery of such share.

**Notes**

**Commencement :**

Sub-sections (1) and (2) have been brought into force in all the districts of West Bengal with effect from 31. 3. 1956 (vide notification No. 6346 L. Ref. dated 30. 3. 1956).

Proviso to sub-section (1) with retrospective effect has been added by West Bengal Land Reforms (Amendment) Act, 1965 *i.e.*, W. B. Act No. XVIII of 1965 (vide Cal. Gaz. Extraordinary dated 31. 7. 1965).

Sub-section (2*A*) similarly with retrospective effect has been added by W. B. L. R. (Am.) Act, 1965.

Sub-sections(2B), (5) and (6) have been added by W. B. L. R. (Am.) Act, 1965 but not with retrospective effect.

Proviso to sub-section (1) and sub-sections (2A), 2(B), (5) and (6) have been brought into force with effect from 1.11.1965 by Notification No. 14810-L. Ref., dated 25-9-1965.

Sec. 18 was brought into force with effect from 31. 3. 1956 by notification No. 6346 L. Ref. d/-30. 3. 1956 in all the districts of West Bengal. Then there was no question of transfer of territories from Bihar to West Bengal. By Act 40 of 1956 i.e., Bihar and West Bengal Transfer of Territories Act, 1956 certain territories were transferred from Bihar to West Bengal. Sec. 43 of Act 40 of 1956 did not affect the law by which the areas used to be governed before the transfer as aforesaid.

So, by a fresh notification being No. 10732 L. Ref. d/-24. 6. 1967 sec. 18 has been brought into force in the transferred territories as well with effect from 1. 7. 1967.

Sub-sections (3) & (4) have been added by W. B. L. R. (Am) Act, 1962 with retrospective effect (vide Cal. Gaz. Extraordinary dated 15. 12. 1962).

**Scope :**

Disputes between the bargadar and the owner of the land on the matters enumerated in clauses (a) to (c) since the coming into force of this Act have got to be tried not by any other tribunal but by officer or authority appointed by the State Govt. for the purpose. Section 18(1) may be compared with section 7 of W. B. Bargadars Act which provided that all disputes between the owner and the bargadar referred to in clauses (a) to (d) of section 7(1) were to be decided by the Board appointed for the purpose.

Sub-section (2) empowers the officer or authority aforesaid to decide the question whether a person is a bargadar or not and to whom the share of the produce is deliverable while deciding the dispute referred to in clauses (a) to (c) of sub-section(1). Proviso to sub-section (2) introduced with retrospective effect by W. B. L. R. (Am.) Act, 1965 lays down that the period of limitation for owner's making an application for delivery of the share crop by the defaulting bargadar is two years from the date when the delivery falls due.

Rule 3 W. B. L. R. (Bargadars) Rules, 1956 provides that the share of crop falls due on the seventh day after the date of threshing. Sub-section (2A) added with retrospective effect lays down the mandatory provision that default of the bargadar shall be condoned if it is found to be due to a bonafide belief in the mind of the bargadar that the land had vested in the state or any uncertainty in the matter in the mind of the bargadar. Instead of being ejected in that event the defaulting bargadar shall be allowed to deliver the share of crop or its equivalent in money in annual instalments not exceeding four, the first instalment falling due on the first day of *Chaitra* next following the date of the order. In *Nitya Gopal Bar & another* v. *Rathindra Kr. Dinda* [C. R. No. 4365-4374 of 1962 decide by *S. K. Sen, J.* on

16. 1. 1963] the contention urged on behalf of the bargadar was that the defaulting bargadars might be condoned and no penalty provided in section 17(1) (c) of the Act might be levied, because the bargadars withheld the share crop due to a bonafide belief that the lands had vested. The contention was not given effect to in the said unreported decision. But the decision is no longer a good law in view of sub-section (2A).

Sub section (2B) too has introduced a major change. It consists of two parts. Firstly, it lays down the duty of the officer or the authority when an order of ejectment of bargadar is made on the ground of default of one year only. In that case the officer or the authority shall direct the bargadar to deliver the share of crop hitherto undelivered or to pay its equivalent in money to the owner by the 1st day of *Chaitra* of the year next following the year of default when the order of ejectment has been made after such date by the first day of *Chaitra* next following the date of such order. Secondly, it provides that if the bargadar complies with the direction he shall not be ejected any further. Take a concrete case. Suppose a proceeding for ejectment of the bargadar under section 17(1) (*c*) of the Act has been allowed on the ground that the bardagar has defaulted in delivering the share of crop for only 1373 B. S., the threshing of the produce having been made on 1st *Agrahayan* 1373. If the proceeding is complete in *Falgoon* 1373 B. S., the officer or authority deciding the dispute shall direct the bargadar to deliver to the owner the share of crop due to the owner or pay to him its equivalent in money by the first day of *Chaitra* 1373 B. S. If the bargadar does it he will not be ejected any further. If proceeding is completed in any month of 1374 B. S. other than *Chaitra* the officer or the authority shall order the bargadar to deliver the share of crop or its money value by the first day of *Chaitra* 1374 B. S. Even if the order is made on the 1st. day of *Chaitra* itself the officer is bound to direct the bargadar to deliver or pay the produce or its money value by the 1st. day of *Chaitra* next year.

The dispute to be entertainable by the officer or authority referred to in sec. 18(1) must relate to (1) division or delivery of produce ; (2) or recovery of produce forcibly taken or harvested by the owner from the bargadar, or (3) termination of cultivation by the bargadar ; or (4) place of storing or threshing

of produce. The word 'delivery' in sec. 18(1) (*a*) is controlled by sec. 16(2) which lays down that bargadar shall deliver to owner. So a proceeding for recovery of produce (or its equivalent in money) forcibly taken by owner from bargadar's custody or forcibly reaped from the field did not fall within the purview of such Bhagchas Officer's jurisdiction prior to introduction of clause (*aa*) to sec. 18(1). Now a dispute relating to recovery of share of produce forcibly taken by an owner falls within Bhagchas Officer's jurisdiction. If the act of owner amounts to termination of barga cultivation remedy of the aggrieved bargadar lies in a proceeding under sec. 19B before the officer specially empowered for the purpose. It has been held in *Purna Deb Roy* v. *Ram chandra* [56 C. W. N. 164 : A. I. R. 1952 Cal. 559 : 89 C. L. J. 299 : I. L. R. (1953) I Cal. 275] that sec. 7(1) of Bargadars Act which was analogous to sec. 18(1) of the Act has no applicability to Criminal prosecutions under sec. 424, I. P. C. by a bargadar or an adhiar.

**Appointed authority :**

Except the officer or authority appointed no tribunal can decide disputes between the owner and the bargadar in case the disputes fall within any of the categories enumerated in clauses (*a*) to(*c*). The word "appointed" does not seem to mean already appointed. It may also mean to be appointed at any future time. In connection with some other statute it has been observed in *Assam State* v. *Sristi Kar* [A. I. R. 1957 S. C. 414 : 1957 S. C. A. 697 : 1957 S. C. R. 295] that "appointed" does not necessarily mean already appointed. It may also mean 'to be appointed at any future time'. When a person is appointed by the Govt. after the date of the Act, he may immediately thereafter be described as a person appointed by the Govt.

**Power to make interim order :**

It has been held in a case under sec. 7 of W. B. Bargadars Act, in *Debendra* v. *B. C. Board Joynagar* [59 C. W. N. 919] that Board had no jurisdiction to make an interim order that pending the decision of a dispute by the Board, the produce of the land in question should be kept in the custody of a Receiver. *S. R. Das Gupta, J.* observed there is nothing in the said section or in the Act empowering the Board to make an interim order.

The rules framed under this Act also do not give any such power. Since under the Act too no such power has been reserved, it is submitted, that making of an interim order is beyond the ambit of tribunal's power.

**Shall be decided by the appointed authority :**

The provisions of this section taken together with sec. 21 clearly bar the jurisdiction of any other tribunal to decide the dispute referred to in clauses (*a*) to (*c*) of sub-sec. (1).

Under sec. 7(1) Bargadars Act which is identical with sec. 18(1) of this Act every such dispute between bargadar and owner had got to be decided by the Board established for the area. Under sec. 9 of Bargadars Act which is identical with sec. 21(1) of the Act no Court could entertain any suit or proceeding in respect of any such matters. Sec 18 of Bargadars Act, pari materia with sec. 3 of this Act provided that the provisions of the said Act would have overriding effects. In deciding a case under Bargadars Act their Lordships of Full Bench in *Mohendra* v. *Delaraddi* [A. I. R. 1966 Cal. 285] held that where no Board had been established for the area Civil Court's jurisdiction to decide any such dispute between bargadar and owner is not barred.

Their Lordships overruled *Adhar* v. *Bistu* [60 C.W.N. 351] and *Ismail* v. *Tom Mundra* [59 C. W. N. 658] and approved the single bench decisions in *Bharat Chandra* v. *Gour Chandra* A. I. R. 1953 Cal. 95] and *Krishna Chandra* v. *Panchu* [A. I. R. 1953 Cal. 720].

It has been laid down in *Jadunath* v. *Lalmohon* [66 C. W. N. 88] that existence of a dispute regarding the matters specified, is a *sine quanon* (pre-requisite condition) to the applicability of sec. 21 of the Act and consequently where there is no dispute, the bar of jurisdiction cannot be applicable. As laid down in *Krishna* v. *Panchu*, [57 C. W. N. 532 : A. I. R. 1953 Cal. 720] the question whether a person is a bargadar or not or to whom the share of produce is deliverable shall be final and conclusive and such decision cannot be called in question in any Civil Court.

But High Court has power of superintendence under Art. 227 of the Constitution, as the officer or authority, appellate officers are tribunals within the meaning of Art. 227 [*Haripada* v. *Ananta*, 56 C. W. N. 124 : A. I. R. 1952 Cal. 526 : I. L. R. 1953

Cal. 226 ; *Girish Majhi* v. *Girish Maiti*, 56 C. W. N. 320 : 89 C. L. J. 196 ; A. I. R. 1951 Cal. 574 ; *Ramhari* v. *Nilmoni*, 56 C. W. N. 325 : A. I. R. 1952. Cal. 184 : 89 C. L. J. 15 ; *Narendra* v. *Binode*, 56 C. W. N. 23 : A. I. R. 1951 Cal. 138] Such power under Art. 227 has to be exercised only in extra-ordinary cases as per *P. N. Mookherjee, J.* in 56 C. W. N. 124 at 135.

Sub-sec. (2) lays down that such officer or authority as the State Govt. may appoint has the jurisdiction to decide the question whether a person is a bargadar or not and to whom the share of the produce is deliverable provided the dispute referred to in sub-sec. (1) on matters enumerated in clauses (*a*) to (*c*)falls for his decision. It has been laid down in *Kalipada* v. *Moni Mohan* [67 C. W. N. 1076] that such special tribunal has no jurisdiction to decide whether the alleged bargadar is a tenant. It has been laid down in *J. N. Malik* v. *S. N. Palit* [69 C. W. N. 210] that the officer is not authorised to decide the question of title whether a person is a bargadar or not even though no dispute arises in respect of the said three matters enumerated in clauses (*a*) to (*c*) of section 18 ; the jurisdiction of the officer in deciding the three matters is exclusive but section 18 (2) does not oust the jurisdiction of the civil court to entertain a suit for declaration as to whether a person is a bargadar or a tenant.

**Specification of money value in order :**

Sub-secs. (3) & (3A) provides that the authority or the officer deciding the dispute referred to in sub-sec. (1) of this section shall also specify a money value of the share of crops to be delivered by the bargadar to the owner. In the event of bargadar's default to deliver the crop so ordered, he shall be liable for the amount so specified, the amount being recoverable in execution of the order in the manner provided in Rule 9 of W. B. L. R. (Bargadars) Rules, 1956.

In proviso to sec. 7(3) Bargadars Act, 1950 there was a specific provison to the effect that the Board should specify such money value in its award. Previously in this Act such provision was absent and that led to a confusion whether legislature intended that such specification of money value was necessary or not. To remove the anomaly by W. B. L. R. (Am.) Ordinance, 1962 (Ordinance No. V of 1962) it was provided that the officer

passing an award shall specify such money value and specification of such money value in any order passed prior to the coming into force of the aforesaid Ordinance must be deemed to have been validly made. The Ordinance later was replaced by W. B. Act No. XVI of 1962 i.e., W. B. L. R. (Am.) Act, 1962 first published in Cal. Gaz. Ext. Ord. dated 15. 12. 1962.

Sub-section (5) added by W. B. Act No. XVIII of 1956 i.e., W. B. L. R. (Am.) Act, 1965 empowers the bargadar or the owner or his successor-in-interest to move the Revenue Officer or the authority deciding the dispute or his successor-in-office in review in case the award does not specify the money value. Such application however has got to be made within 90 days from 1. 11. 1965. The procedure to be adopted when such application for review has been presented has been provided for in sub-section (6). On 31. 7. 1965 W. B. L. R. (Am.) Act, 1965 was first published in the official Gazette and by reason of Notification No. 14810-L. Ref. dated 25-9-65 the Amendment Act came into force with effect from 1. 11. 65.

**Heirs of the bargadar and outstanding dues :**

It has been held by *Chatterjee, J.* in *Sidheswar* v. *Bharat* [65 C. W. N. 1125] that for the outstanding dues of their predecessor the heirs of the deceased bargadar are liable. But their liability is limited to the extent of assets inherited by them.

It is submitted, however, that for recovery of such share of produce from the heirs of the deceased bargadar no proceeding under section 18(1) (*a*) can be brought, for, after the death of the bargadar the relationship of bargadar and owner does no longer exist between the heirs of the deceased bargadar and the owner, barga right being not heritable and the existence of the relationship being the prerequisite condition for Bhagchas Officer's assuming jurisdiction over the dispute.

**Non-compliance with rule 6 of W. B. L. R. (Bargadars) Rules :**

Rule 6 of W. B. L. R. (Bargadars) Rules, 1956 provides that the tribunal would take cognisance of the dispute on an application for decision in respect of the matters referred to in sub-sec (1) of sec. 18. The rule provides like rule 6(2) Bargadar Rules under Bargadars Act that every such application shall

be signed and verified in the manner provided in sub-rules (2) and (3) of rule 15 of order 7 of Civil Procedure Code.

Non-compliance with the rule was held fatal in *Narendra Nath Sashmal* v. *Binode Behari* [56 C. W. N. 23]. But if the objection is not taken in trial Court and before Appellate Tribunal, such objection should be deemed to have been waived and as such this objection cannot be taken for the first time in High Court [*Darpa Narayan Pakhira* v. *Samarendra*, 57 C. W. N. 337].

A reference to other statutes where signature and verification are to be made in the line of order 7 rule 15(2) & (3) C. P. C. shows that defect in verification or even omission to verify never is held fatal. Sec. 83(1) Representation of the People Act provides that election petition shall be signed and verified in the manner laid down in Code of Civil Procedure. His Lordship of Supreme Court in *Joshi* v. *Brijlal* [1955 S. C. A. 999] held that it would be a wrong exercise of discretionary power to dismiss the petition on the sole ground of absence of date of verification. In such a case the applicant should normally be called upon to remove the lacuna by adding a supplementary verification. In *Bhanwarilal* v. *Srinivash* [A. I. R. 1952 Ajm. 44 : 4 D. L. R. Ajm. 45] the plaintiff was allowed to sign and verify the plaint at a subsequent stage under Oη. 6 R. 15, C. P. C. As held in *A. I. R. Ltd.* v. *R. C. D. Datar* [(1959) 62 Bom. L. R. 251] when such a defective plaint in re-signed and re-verified on a subsequent date, it relates back to the original date of the suit.

**Power of restoration of a proceeding :**

As laid down in *Sudhangshu* v. *Kangal* [69 C. W. N. 908] there is no express or implied power in the Bhagchas Officer to set aside an exparte award or order made by him under section 18 of the Act. In that case the bhagchasi against whom there stood an exparte award challenged in a suit in civil court the award as being obtained by suppression of notices and processes. Accordingly the prayer was for a declaration that the award was not binding on the bhagchasi. It was contended that the suit was hit by section 21 of the Act. *P. B. Mukherjee J.* after laying down that the Bhagchas Officer has no power to set aside the

exparte award suggested a practical way to get round the difficulty. His Lordship observed, "But then supposing that he had no such power, what then is the bar to the Bargadar making an application of his own under section 19 of the Act again raising the question of delivery of the produce and termination of cultivation of the Barga ? In that case the Bhagchas Officer will have to determine that question again, unless he says that his previous order is a kind of *resjudicata*. But then in order to be *a resjudicata* he has got to come to a finding that the notice and the process had been correctly served before the impugned order or award was made previously and that the order passed exparte was really an order where the Bargadar did not choose to appear deliberately in spite of proper and due service of notice and process. If the Bargadar succeeds in satisfying the Bhagchas Officer, on his view of the case, there can be no *resjudicata* by reason of the previous exparte award, decision or order of the Bhagchas Officer and the whole question will be reopened. The previous decision in that case exparte and not on merits will not and cannot be *resjudicata*.

**Compulsory stay of termination proceeding :**

Ordinance no III of 1969 (West Bengal Land Reforms Amendment Ordinance) has inserted section 21A with effect from 7th April, 1969. Under section 21A all proceedings pending on 7th day of April, 1969 or to be filed later but before the expiry of the Ordinance aforesaid, for termination of barga cultivation are liable to be stayed till the expiry of the Ordinance.

**18A.** *Continuance in office of officers and authorities appointed under sections* 17 *and* 18 *until successor commences to function* :—(1) An officer or authority appointed under section 17 or section 18 shall continue to function after the appointment of his or its successor until such successor commences to function.

(2) Notwithstanding any decision of any Court to the contrary, any proceedings continued by or before any such officer or authority, after his or its successor is appointed but before such successor com-

mences to function, shall be deemed to be and to have always been validly continued or made.

(3) Any appeal against any order referred to in sub-section(2) filed before the commencement of the West Bengal Land Reforms (Amendment) Act, 1960 or any order made in any such appeal shall have no effect.

## Notes

**Commencement :**

This section was originally inserted by the West Bengal Land Reforms (Amendment) Ordinance, 1960. The Ordinance later was replaced by W. B. L. R. (Am.) Act, 1960 first published in Cal. Gazette, Extraordinary dated 28. 3. 60.

**Scope :**

Section 18 was brought into force in West Bengal by Notification No. 6346 L. Ref. d/-30. 3. 1956 with effect from 31. 3. 1956.

Subsequent to this some territories were transferred from Bihar to W. Bengal under Transfer of Territories Act, 1956. Sec. 18 did not attract within its operation those areas by reason of sec. 43 Transfer of Territories Act, 1956 (Act 40 of 1956). So by notification No. 10732 L. Ref. d/- 24. 6. 1967 the section was brought into force in the transferred territories as well with effect from 1. 7. 1967. Section 18 bars the jurisdiction of courts except the tribunal appointed by the State Government. Sec. 17 too lays down that except the officer or authority referred to in the said section no tribunal can terminate cultivation by a bargadar.

A question could have arisen as to whether the decision of any such officer or authority made after the appointment of his successor is void as being made without jurisdiction. This section seeks to protect such decisions with restrospective operation. The section further empowers any such officer to exercise his jurisdiction after the appointment of his successor till the commencement of duty by such successor.

Sub-section (3) lays down that any appeal filed before the commencement of W. B. L. R. (Am.) Act, 1960 against any

order made by any officer or authority appointed under section 17 or 18, the order being made after the appointment of his successor and before the commencement of function by such successor, shall cease to have any effect and any order made by the appellate Munsif against such order shall be void.

**19.** *Appeal.*—(1) An appeal shall lie to the Munsif, having jurisdiction over the area in which the land is situated, against any order made under section 17 or section 18 except where such order was made with the consent of the parties to the dispute. The Munsif shall, on an appeal being disposed of, send a copy of his order to the officer or authority whose decision is appealed against.

(2) The period within which the appeal mentioned in sub-section (1) must be filed shall be thirty days from the date of the order appealed against :

Provided that an appeal against any order referred to in sub-section (2) of section 18A made before the commencement of the West Bengal Land Reforms (Amendment) Act, 1960 may be filed within ninety days of such commencement :

Provided further that the provisions of section 5 of the Indian Limitation Act, 1908 (Act IX of 1908) shall apply to an appeal under this section.

(3) The Munsif hearing the appeal may for sufficient cause make an order staying execution of the order appealed against.

(4) When the Munsif makes an order under sub-section (3), a copy of such order shall be sent to the officer or authority before whom an application for execution is pending.

## Notes

**Commencement :**

Sub-sections (1) & (2) have been brought into force in all the districts of West Bengal with effect from 31. 3. 1956 (vide notification No. 6346 L. Ref. dated 30. 3. 1956). The first

proviso to sub-section (2) was added initially by W. B. L. R. (Amendment) Ordinance, 1960. Later it was substituted by W. B. L. R. (Amendment) Act, 1960. The second proviso was added by W. B. L. R. (Am.) Act, 1962. Sub-sections (3) & (4) with retrospective effect have been added by W. B. L. R. (Am.) Act 1965 and have been brought into force from 1. 11. 1965 (vide notification No. 14810 L. Ref. d/-25. 9. 65).

Sec. 19 has been brought into force in the transferred territories with effect from 1. 7. 1967 by notification No. 10732 L. Ref. d/-24. 6. 1967.

**Scope :**

Sub-section (1) provides a right of appeal against all order passed either under section 17 or under section 18 except where the order has been passed on consent of both parties. The forum of appeal is the court of the Munsif having jurisdiction over the area.

Sub-section (2) provides 30 days from the date of the order within which the appeal is to be presented if the appeal be against an order made under section 17 or 18. It is further provided that 90 days is the period within which an appeal is to be preferred if the appeal be against an order made under section 18A(2) i.e., order by an authority or officer made after the appointment of his successor but before such successor commences to function.

The last proviso lays down that the provisons of sec. 5 Limitation Act, 1908 shall apply to appeals under section 19.

Sub-section (3) empowers the Munsif hearing the appeal to stay the execution of the order appealed against for sufficient cause.

Sub-section (4) provides that the Munsif shall send a copy of his order staying the execution to the executing authority in whose tribunal the execution case is pending.

**Munsif if a tribunal within the meaning of Art. 227 of Constitution :**

The appellate officer under W. B. Bargadars Act was held to be a tribunal within the meaning of Art. 227 of the Constitution of India and as such it was held that High court has power of superintendence over such tribunals [*Narendra* v. *Binode*, 56 C. W. N. 23 : A. I. R. 1951 Cal. 138 ; *Haripada* v. *Ananta* 56 C. W. N. 124 : A. I. R. 1952 Cal. 526 : I L. R. 1953 Cal.

226 ; *Girish Majhi* v. *Girish Maiti*, 56 C. W. N. 320 : A. I. R. 1951 Cal. 574 : 89 C. L. J. 196 ; *Ramhari* v. *Nilmoni*, 56 C.W.N. 325 : A. I. R. 1952 Cal. 184 : 89 C. L. J. 15].

**Munsif if a Court or a Persona designata :**

In *B. K. Paria* v. *Gostha Dalui* [64 C. W. N. 1062] the Div. Bench held that Munsif exercising jurisdiction under sec. 19 is not a *persona designata* but is a Civil Court having the power to remand a case to trial Court. While referring to this decision *Chatterjee, J.* observed in *Dharam Chand* v. *Nabin Chandra* [66 C. W. N. 902 at P. 904], "I have been referred to a decision of Div. Bench of *Banerjee* and *Amaresh Roy, JJ.* reported in 64 C. W. N. 1062.....Where their Lordships held that the Munsif was Civil Court and an appeal to a Munsif means an appeal to a Civil Court and to a persona designata." It appears that Their Lordships' observation has been misquoted in the report and the words ought to have been "not to a persona designata". The relevant portion of the observations of *B. K. Paria's* case (at pages 1064-1065 of the C. W. N. report) may be quoted in verbatim : "Under the provisions of sec. 21 such an order must be taken as being questioned, by way of appeal, before the Munsif as a Civil Court and not as a persona designata".

As stated in Osborn's Concise Law Dictionary, 4th. Edn., P. 253 persona designata is a person pointed out or described as an individual as opposed to a person ascertained as a member of a class or filling a particular character.

A court of law may be defined as a tribunal dealing with and adjudicating upon civil disputes by operation of law in a judicial manner untroubled by ulterior considerations and matters of executive policy and observing certain definite rules of procedure which are either definite by statute or recognised by practice. A tribunal falling under this definition may be yet not a court of law, but if any of these attributes are missing the tribunal fall short of a court of law. [*Pitman's Shorthand Academy* v. *Lila Ram*, A. I. R. 1950 E. P. 181 : 5 D. L. R. Simla 162].

In *Braja Nandan Sinha* v. *Jyoti Narain* [A. I. R. 1956 S. C. 66] it was observed pronouncement of a definitive judgment is considered to be the essential *sine qua non* of a Court and unless and until a binding and authoritative judgment can be pronounced by a person or body of persons it cannot be predicted that

he or they constitute a court. Likewise in *Virendra Kumar* v. *State of Punjab* [A. I. R. 1956 S. C. 153] it was stated that what distinguishes a court from a quasi Judicial Tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment. Reference may also be made to *Subrahmanyam* v. *Premier Bank* [A. I. R. 1968 All. 157 at P. 160].

**Power of remand :**

Munsif's inherent power to remand a case to the trial Court has been recognised in *B. K. Paria* v. *Gostha Dalui,* [64 C. W. N. 1062]. The Div. Bench relied on an unreported decision of *Mitter, J.* in *Gouranga Mahakur* v. *Murari Mohan Routh,* [C. R. Case No. 2016 of 1958].

In another unreported decision *Jiban Kr. Maiti and others* v. *Rathindra Nath Dinda,* [C. R. Case No. 4365 to 4374 of 1962 decided by *Sen, J.* on 16. 1. 1963] the bhagchas officer dismissed the case for termination of barga cultivation on the preliminary ground of defect in giving the description and location of the land under barga cultivation. Munsif in appeal found that there was no such defect and he decided the case on merits without remanding the case. It was argued that the Munsif ought to have remanded the case. Repelling the contention *Sen, J.* observed, "Order 41 Rule 24 of Code of Civil Procedure does not provide that in every such case the appellate officer must remand the suit. Order 41 Rule 24 of C. P. C. provides that where the evidence upon the record is sufficient to enable the appellate Court to pronounce judgment the appellate Court may finally determine the suit."

**Power of restoration of appeal dismissed for default :**

Speaking generally about Court's power to restore a case dismissed for default is has been laid down in *Matilal* v. *Certificate Officer,* [59 C. W. N. 660 at P. 666] that a count has inherent power to restore a cause before him if the same has been dismissed.

**Limitation :**

The decision *Dharam Ch. Roy* v. *Nabin Ch.* [66 C. W. N. 902] is a decision of Chatterjee, J. dated 21.2.1962 i.e., before

the repeal of Indian Limitation Act, 1908 by the Limitation Act, 1963 which came into operation on and from 1.1.1964 in pursuance of the notification published in Gazette of India dated 9.11.63.

In the aforesaid decision Chatterjee, J. referring to preamble of the old Act held that Munsif is a Court within the meaning of the preamble and observed, "If the appeal is under a special or local Act, that Act may refer to the general law for determining the period of limitation and in that case, secs. 4 to 25 would apply for determining the period. If on the other hand the special or local Act does not refer back to the general Law, in the matter of determining the period of limitation, secs. 4, 9 to 18 and 22 would be applicable unless expressly excluded and unless expressly included, secs. 5 to 8, 19 to 21 and 23 to 25 would not apply.

It may be convenient to compare the Preambles of the old Act and new Act as also the sec. 29 of both the Acts

| *Preamble of New Limitation Act :* | *Preamble of old Limitation Act :* |
|---|---|
| An Act to consolidate and amend the law for the limitation of suits and other proceedings and for purposes connected therewith : | An Act to consolidate and amend the law for the limitation of suits, and for other purposes. Whereas it is expedient to consolidate and amend the law relating to limitation of suits, appeals and certain applications to Courts,.....and whereas it is also expedient to provide rules for acquiring by possession the ownership of easements and other property : |

*Sec. 29 of New Act :*

(1) .....

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed by the Schedule, the provisions of sec. 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in secs. 4 to 24 inclusive shall apply only in so far as, and to the extent to which, they are not expressly excluded by such special or local law.

(3) .....

(4) .....

*Sec. 29 of Old Act :*

(1)

(2) Where any special or local law prescribes for any suit, appeal or application a period of limitation different from the period prescribed therefore by the First Schedule, the provisions of sec. 3 shall apply, as if such period were prescribed therefor in that Schedule, and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special local law—

(a) the provisions contained in Sec. 4, secs. 9 to 18 and sec. 22 shall apply only in so far as and to the extent to which they are not expressly excluded by such special or local law ;

(b) .....

(3) .....

(4) .....

The combined operation of sub-clauses (*a*) and (*b*) of sub-sec. (2) of old sec. 29 was that so far as special or local laws are concerned, only secs. 4, 9 to 18 and 22 of the Act applied and that too subject to such modifications as was prescribed.

Present sec. 29(2) provides that secs. 4 to 24 of Limitation Act would apply uniformly to all special or local laws, in the absence of any local law excuding the application of any or all of those provisions in any given case.

Reference may be made to *Kaushalya Rani* v. *Gopal Singh* [A. I. R. 1964 S. C. 260 ; *Health Inspector* v. *Kelappar* A. I. R. 1965 Kerala 31 ; *Koshana* v. *Pashupati,* A. I. R. 1967 A. P. 205]. That being the position although the appellant is bound to file an appeal within thirty days he is entitled to invoke the provisions relating to condonation of period when the Court is closed (i.e., sec. (4) ; condonation of the period for obtaining copy (i.e., sec. 12(2)) ; exclusion of day from which the period of limitation is reckoned ; condonation of the period during which the knowledge of the right or title on which a suit or application is founded is concealed by the fraud of the opponent etc.

**Sufficient cause for condonation of delay in filing appeal:** *Dharam Chandra* v. *Navin Chandra* [66 C.W.N. 902] is no longer a good law in view of the last proviso to section 19 which lays down that provision of section 5 of Limitation Act, 1908 shall apply under this section. Entire Limitation Act 1908 has been repealed by Act 36 of 1963 (Limitation Act, 1963) which came into operation on and from 1. 1. 1964. In this connection it may be remembered that when a repeal is followed by re-enactment with or without modification section 6(1) Bengal General Clauses Act which is in the same line of section 38 of Interpretation Act of England and the principles underlying it applies and therefore any reference in such cases to the provisions of the repealed Act in the incorporating Act or provisions of Acts must be construed as reference to the corresponding provisions of the re-enacted Act [*Ramprosad* v. *Bijoy Kumar Sadhukhan,* 69 C. W. N. 921 : A. I. R. 1966 Cal. 488 ; *State of M. P.* v. *M. P. Singh,* A. I. R. 1960 S. C. 579].

Ignorance of law resulting in inaction on the part of a litigant to assert his rights of which he has no knowledge as a

result of such ignorance does not constitute sufficient cause within the meaning of sec. 5 of Limitation Act [*Sitaram* v. *M. N. Nagrashana*, A. I. R. 1954 Bom. 537]. The failure of the appellant to account for his non-diligence during the whole period of limitation prescribed for the appeal does not disqualify him from praying for condonation. Enough if he can account for the period between the last day of limitation and the date of filing of appeal [*Ramlal* v. *Rewa Cornfields*, A. I. R. 1962 S. C. 361].

Delay of every day between the last day prescribed for appeal and the date of actual filing of appeal must be explained [*State* v. *Raghuraj Singh*, A. I. R. 1968 Raj. 14 at P. 18].

Once a client proves that he had acted bonafide and with reasonable care in approaching a particular lawyer who gave him wrong advice with the result that the period of limitation expired before any step was taken, he is entitled to invoke sec. 5 Limitation Act [*Kshetramoni* v. *Surendra Mohan*, 60 C. W. N. 200]

If on account of a wrong advice of an advocate there is delay in filing appeal, it is a sufficient cause [*Prafulla Kumar Mukherjee* v. *Prabhat Bhattacherjee*, 71 C. W. N. 648]

Explanation to sec. 5 of Act No. 9 of 1908 lays down that the fact that the appellant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of sec. 5. If the party shows that the delay was due to any of the facts mentioned in the explanation that would be treated as sufficient cause, and after it is treated as sufficient cause the question may then arise whether the discretion should be exercised in favour of the party or not [*Ramlal* v. *Rewa Cornfields Ltd.* A. I. R. 1962 S. C. 361 at pp. 363-366]. Wrong advice of counsel due to recent change in law has been held to be sufficient cause within the meaning of sec. 5 Limitation Act in *Shivcharan* v. *Nawalkishore* [(1954) 9 D. L. R. M. B. 56]. His Lordship in *Shivcharan's* case has observed "the words, 'sufficient cause', occurring in sec. 5 Limitation Act, are very wide and comprehensive and it is difficult to attempt to define precisely what it embraces. An attempt in this direction would result in crystallizing it in a rigid form and the judicial power and discretion which the legislature in its wisdom has left unfetterred would become limited. The discretion in each particular case should be exercised on its own facts with a view to secure furtherance of justice."

Substantially similar are the observations of the Punjab High Court in *Shikar Chand* v. *Kishan Chand* [(1968) 70 Punj. L. R. 363 (D)] wherein it has been observed that the expression 'sufficient cause' deserves to receive a liberal construction striking a just and equitable balance between the right secured by the respondent as a result of the expiry of the prescribed period of limitation and the injustice of depriving the appellant of adjudication of his grievance on the merits of the appeal, for cause beyond his reasonable control. This is a matter for the exercise of judicial discretion of the Court, but it must be remembered that there can be no set of iron rail on which such discretion must always be obliged to run and each case has to be decided on its own peculiar facts. It has also been impressed in *Shikar Chand* v. *Kishan Chand* [(1968) 70 Punj. L. R. 363 (D)] that to invoke section 5 Limitation Act written application is not always necessary ; oral application can also be entertained.

**19A.** *Penalty.*—(1) Any person who fails to comply with an order made under section 17, 18 or 19 shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both.

(2) If, after the commencement of the West Bengal Land Reforms (Amendment) Act., 1966, any person owning any land terminates or causes to be terminated the cultivation of the land by a ***bargadar*** in contravention of the provisions of this Act, he shall be guilty of an offence punishable with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

(3) An offence under sub-section (2) shall be cognizable and bailable.

## Notes

Sub-sec. (1) has been inserted by W. B. L. R. (Am.) Act, 1957. The assent of the Governor was first published in Cal. Gazette Extraordinary, dated 7. 1. 1958. It provides that non-compliance with secs. 17, 18 or 19 will be visited with penalty

which may extend to imprisonment for six months or fine, the maximum being five hundred rupees. Such punishment cannot be inflicted by the authority whose order has been violated. It is only a Judicial Magistrate who can take cognizance of the offence (vide sec. 5 separation of Judicial and Executive Functions Act).

Sub-section (2) of section 19A has been added by Amendment Act of 1966 (W. B. Act XI of 1966). It contains a penal provision. Section 17 of the Act enumerates the grounds for termination of barga cultivation and section 18 lays down inter-alia the procedure thereof. Sub-section (2) lays down that termination of cultivation by an owner without conforming to those sections will be visited with penalty, the maximum being six months imprisonment or a fine of Rs. 1000.00 P. Both types of penalty may be imposed simultaneously. This penal provision can be invoked only after the coming into force of the Amendment Act of 1966.

Sub-section (3) too has been added by Amendment Act of 1966 (W. B. Act X of 1966).

Sec. 19A(1) has been brought into force with effect from 16. 2. 1958 by notification No. 2730 L. Ref. d/—13. 2. 1958 in all the districts of West Bengal except the police stations of Chopra, Karandighi, Islampore, Goalpokhar of the Raiganj sub-division of West Dinajpore.

The section has been brought into force in the areas transferred from Bihar to West Bengal by Transfer of Territories Act, 1956 with effect from 1. 7. 1967 by notification No. 10732 L. Ref. d/-24. 6. 1967.

**19B.** *Restoration of land to bargadar.*—(1) If a person owning any land terminates or causes to be terminated the cultivation of the land by a *bargadar* in contravention of the provisions of this Act, then any officer specially empowered by the State Government in this behalf, shall, on the application by such *bargadar* by order direct—

(*a*) in a case where such land has not been cultivated, or has been cultivated by the owner or by any person on his behalf other than a *bargadar*, that the land be immediately restored to the applicant and

further that forty per cent. of any produce of the land shall be forfeited to the State Government and the remaining sixty per cent. of such crops shall be retained by the applicant,

(*b*) in a case where such land has been cultivated by a new *bargadar* engaged by the owner, that the land be restored at the end of the cultivation season to the applicant and further that the new *bargadar* shall retain fifty per cent. of the crops harvested before restoration and make over the remaining fifty per cent. of such crops to the applicant.

(2) An appeal shall lie to the Collector against any order made under sub-section (1).

(3) For purposes of sub-section (2), Collector shall include an Additional Collector, a Deputy Collector, a Sub-Collector, a Sub-Deputy Collector, or any officer specially empowered by the State Government in this behalf.

## Notes

**Commencement :**

Sec. 19B has been brought into force with effect from 16. 2. 1958 in all the districts of W. Bengal except the police stations of Chopra, Karandighi, Islampore and Goalpokhar of the sub-division of Raiganj in the district of W. Dinajpore by notification No. 2730 L. Ref. d/-13. 2. 1958.

It has been brought into force in transferred territories by Notification No. 10732 L. Ref. d/-24. 6. 67 with effect from 1. 7. 67.

**Scope :**

Inserted by W. B. L. R. (Am.) Act, 1957 this section lays down that if the bhag cultivation of a bargadar is terminated or caused to be terminated by any person without resorting to sec. 17 of the Act the aggrieved bargadar may invoke the section.

Then the land shall be restored to such bargadar on his application to the officer specially empowered under the section and 40 p. c. of the produce of the land shall be forfeited by the Government and the remaining shall be given to such bargadar. If a new bargadar is appointed for the cultivation of the land,

it shall be restored to the bargadar whose bhag cultivation has been illegally brought to an end at the end of the cultivation season and the produce shall be divided in the proportion of 50 : 50 in between the new bargadar and the ousted bargadar to whom the land has been restored.

**Termination of bhag cultivation : pre-requisite condition**

*In Mritunjoy* v. *S. D. O., Tamluk* [68 C. W. N. 112] the jotedar wrongfully took away the paddy but the bhagchasi was neither dispossessed nor his bhag cultivation terminated. It was held that bhagchasi's remedy does not lie in sec.19B. His Lordship observed that in order to maintain an action under sec. 19B(1), W. B. L. R. Act it must have to be proved that there has been an illegal termination of cultivation of the land by a bargadar. If that fact is not proved no action under sec.19(B)(1) can be maintained. Even if this jurisdictional fact be proved, then the contingencies under clauses (a) and (b) of the section for exercise of the power by the Bhagchas officer must be proved for granting relief under the section.

**Forum of Appeal against an order under the section :**

Sub-sec. (2) provides that appeal against an order made under sub-sec. (1) lies to Collector. Collector means the Collector of district and includes any officer appointed by the State Govt. to discharge any of the function of a Collector [vide Sec. 2(4) of the Act]. Collector of a district means the Chief officer in charge of Revenue Administration by virtue of sec. 3 (8) of Bengal General Clauses Act. Sub-sec. (3) lays down that appeal against an order made under sub-sec (1) also lies to Additional Collector, Deputy Collector, Sub-Deputy Collector, Sub-Collector or any officer specially empowered by the State Govt. in this behalf.

**Limitation of Appeal :**

By reason of sec. 54 read with sec. 56. period of limitation for such appeals is thirty days from the date of the order. By virtue of sec. 29(2) of Limitation Act, 1963 which lays down that secs. 4 to 24 of that Act would apply uniformly to all special or local laws, in the absence of any local law excluding the application of any or all of these provisions in any given cases, secs. 4 to 24 of New Limitation Act would be attracted

into operation in case of the appeals to the Collector against an order under Sec. 19B (1).

**20.** *Procedure and execution.*—(1) The procedure to be followed in deciding disputes or appeals under this Chapter and the fees to be paid by the parties shall be as may be prescribed.

(2) Any order made under this Chapter including an order passed on appeal shall be executed by the officer or authority appointed by the State Government, in such manner as may be prescribed.

(3) No order for the ejectment of a *bargadar* shall be executed except during the months of the Bengali year specified below,

(*i*) in such portions of the district of Darjeeling as may be declared by notification by the State Government to be hilly portions, the month of Paus or Magh, and

(*ii*) elsewhere, the month of Chaitra or Baisakh :

Provided that proper compensation is paid, in such manner as may be prescribed by the owner to the *bargadar* for his share of the standing crops, if any.

**Notes**

**Commencement and scope :**

The section was brought into force with effect from 31.3.1956 in W. Bengal by Notification No. 6346 L. Ref. d/-30. 3. 1956.

By sec. 3 of Bihar and West Bengal (Transfer of Territories Act, 1956) Act 40 of 1956 certain areas were transferred from Bihar to W. Bengal with effect from 1. 11. 1956. Sec. 43 of Act 40 of 1956 provided as follows : The provision of Sec. 3 shall not be deemed to have effected any change in the territories to which any law inforce immediately before the appointed day extends or applies and territorial reference to any such law shall until otherwise provided by a competent legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day (i.e., 1.11.1956). By sec. 4 of the said Act the appropriate Govt. was empowered to adopt or modify the law.

Sec. 20 eventually came into force with effect from 1. 7. 1967 by Notification No. 10732 L. Ref. d/-24. 6. 1967 in the areas transferred from Bihar to West Bengal under sec. 3 of Act 40 of 1956.

Sub-sec. (3) originally stood as follows : "No order for the ejectment of a bargadar shall be executed except during the months of Chaitra or Baisakh of the Bengali year". Present sub-sec. (3) has been substituted for the old one by W. B. L. R. Second (Amendment) Act, 1960, the assent of the Governor being published in Cal. Gazette, Extraordinary, dated 14.12.1960.

Sub-sec.(1) lays down that the procedure to be followed in deciding disputes or appeals under the chapter and the fees to be paid shall be prescribed by Rules. Rules 6, 7 of W. B. L. R. (Bargadars) Rules, 1956 may be referred to for ascertaining the procedure and fees to be paid in the matter.

Sub-sec(2) lays down that the orders made under this chapter shall be executed by such Officer or authority as appointed by the State Govt. State Govt. has appointed all Subdivisional Officers to be officers authorised under sub-sec. (2) (vide notification No. 1848 L. Ref. dated 30. 1. 1957). True interpretation of the word 'appointed' came for decision in Supreme Court in *Assam State* v. *Sristikar* [A. I. R. 1957 S. C. 414 : 1957 S. C. A. 697 : 1957 S. C. R. 295]. Their Lordships laid down that the words "any other officer appointed" do not mean already appointed. It may also mean to be appointed in future. When a person is appointed by the Govt. after the date of the Act, he may immediately thereafter be described as an officer appointed by the Govt.

In *Abdulla Mallick* v. *Samsher Ali* [66 C. W. N. 1068] possession was taken in execution of an order of trial authority but the order later was set aside in appeal. It was held that it is the executing authority which is the proper forum for making application for restitution.

Sub-sec. (3) lays down that the orders of ejectment of a bargadar shall be executed in the months of Pous and Magh in those areas of Darjeeling which may be declared as hilly portions and in the months of Chaitra or Baisakh elsewhere. It is further provided that if there remain standing crops on the field, the executing authority shall assess the compensation for the said crops and pay it to the bargadar sought to be ejected. Payment

of compensation for the standing crops, if any, is the pre-requisite condition for levying execution of orders of ejectment.

**21.** *Bar of jurisdiction.*—(1) Save as provided in section 19, no order or other proceedings whatsoever under this Chapter shall be questioned in any civil court and no civil court shall entertain any suit or proceeding in respect of any matter mentioned in sections 17 and 18.

(2) On the appointment of officers or authorities under this Chapter all proceedings pending before any Bhagchas Conciliation Board established under the West Bengal *bargadars* Act, 1950 (West Ben. Act II of 1950) shall stand transferred to the officer or authority having jurisdiction over the area in which the land, to which the proceedings relate, is situated.

## Notes

**Commencement :**

This section was brought into force in all the districts of West Bengal with efect from 31. 3. 56 ; vide Notification No. 6346 L. Ref. d/-30. 3. 56.

The section has been brought into force with effect from 1. 7. 1967 in the territories transferred from Bihar to West Bengal under sec. 3 of Bihar and W. Bengal (Transfer of Territories) Act, 1956, Act 40 of 1956 by Notification No. 10732 L. Ref. d/-24. 6. 1967[1].

**Scope :**

The Munsif, having local jurisdiction, is the appellate authority. See sec. 19, *ante*. Besides this function, the jurisdiction of the Civil Court over disputes cropping up between *bargadars* and owners of land as such has been taken away. In ousting the jurisdiction of the Civil Court the intention of law is, perhaps, to provide speedy settlement of such disputes.

[1] For reason as to why the Notification no 6346 L. Ref. d/- 30. 3. 1956 did not operate on the transferred territories, see notes under sec. 20 at P. 126.

Sub-sec. (2) provides for the automatic transfer of proceedings pending before the *Bhagchas* Conciliation Boards to the officers or authorities as soon as they are appointed under this Chapter. But sub-section (2) section 21 to all intents and purposes is an infructuous provision as will appear from the following.

**Automatic transfer of so called pending proceedings under Bargadars Act, 1950 :**

Sec. 59 so far as it relates to the repeal of the West Bengal Bargadars Act, 1950 came into force on 30. 3. 56 as per Notification No. 6346L. Ref. d/-30. 3. 56. The present Act while making provisions for the pending proceedings before the *Bhagchas* Conciliation Boards, is silent about the appeals or applications for revision, applications for review before Appellate Officers, or applications for execution of awards or orders pending immediately before the date of repeal of the W. B. *Bargadars* Act, 1950, the filing of appeals against awards or orders made before that date, i.e., 31. 3. 56, the execution of such awards or orders and certain other matters. Consequently difficulties arose in dealing with those matters. Hence to remove those difficulties, at first the W. B. *Bargadars* Ordinance, 1956 was promulgated on 22. 6. 56 and thereafter the West Bengal *Bargadars Act,* 1956 was passed on 30. 7. 56. For the remedial measures provided therein, see section 2 (*Provisions relating to awards or orders made before* 31*st March,* 1956) of the West Bengal *Bargadars* Act, 1956.

Section 2 of the West Bengal Bargadars Act, 1956 stands as follows :

2(1) *Notwithstanding anything contained in the West Bengal Land Reforms Act,* 1955, *or any notification issued thereunder, where, under the West Bengal Bargadars Act,* 1950 *(hereinafter referred to as the said Act)*

(*a*) (*i*) *any appeal or any application for revision, or*

(*ii*) *any application for review before an Appellate Officer, or*

(*iii*) *any application for execution of an award or order, was pending immediately before the* 31*st day of March,* 1956, *such appeal or application for revision or application for review or application for execution shall be continued.*

(b) *any award or order was made before the* 31*st day of March,* 1956, *by a Bhag Chas Conciliation Board, an appeal shall lie against such award or order or an award or order on an appeal therefrom or an award or order passed on review may be executed,*

*as if the said Act and the rules and the notifications issued and the appointments made thereunder had continued in force :*

*Provided that in computing the period for filing an appeal, time beginning with the* 31*st day of March,* 1956, *and ending with the* 30*th day after the commencement of the West Bengal Bargadars Ordinance,* 1956, *shall be excluded* :

The West Bengal Bargadars Act, 1950 was a temporary enactment and its life was due to expire on the expiration of 31st day of March, 1956. On the 31st day of March, 1956 the said Act, however, was repealed by section 59(7) West Bengal Land Reforms Act or in other words it stood repealed on the expiry of the 30th day of March, 1956. Section 8 of Bengal General Clauses Act saves rights accrued or liabilities incurred under the repealed Act, saves also investigations, proceedings and remedies in respect of such rights and liabilities and provides that such investigation, proceedings and remedies may be instituted, continued and enforced notwithstanding the repeal of the Act *as if the repealing Act had not been passed.* The words under italics are significant. If the West Bengal Land Reforms Act had not been passed even then the life of West Bengal Bargadars Act expired on the expiry of 31st day of March, 1956. The effect of section 8 of Bengal General Clauses Act on the repeal of the West Bengal Bargadars Act was therefore only to keep alive the rights, liabilities and proceedings under the Act for twenty four hours of the 31st March, 1956 during which they would have lived if the repealing Act had not been passed. Sub-section (2) of section 21 of the Act indicates an intention that proceedings pending before the Board would survive and that they would stand transferred to the appropriate officer or authority appointed under the West Bengal Land Reforms Act if and when such officer or authority was appointed. This provision is infructuous as observed by *Chakravartti, J.* in *Rabindra Nath* v. *Gour Mondal* [61 C.W.N. 311 (S.B.)] because on the day of the appointment of the officers which took place far later

than 31st day of March, 1956 the temporary Act (W. B. Bargadars Act) was dead and the proceedings no longer under that Act were alive.

As observed by *Chacravartti, J. in Rabindra Nath* v. *Gour Mondal* [61 C. W. N. 311 (S. B.)] section 21(2) of the Act virtually stands repealed with the coming into force of section 2 of W. B. Bargadars Act, 1956. Special Bench laid down "Sub-clause (a) of section 2 of Bargadars Act, 1956, undoubtedly purports to save all pending appeals, applications for review before an appellate officer and applications for execution of an award or order. Clause (b) gives a right of appeal from awards and orders made by a Board before the 31st March, 1956 and also makes such awards and orders, and awards and orders passed on an appeal or on review, executable. Since it is further said that the proceedings mentioned in the two sub clauses can be continued or brought 'as if the Act and the Rules and the notifications issued and appointments made thereunder had continued in force, the provisions of the Act can obviously be applied in such proceedings and rights and liabilities under the Act can be claimed or enforced in them. Apparently, section 21(2) of the West Bengal Land Reforms Act is virtually repealed because if the proceedings pending before Boards are to continue before the same bodies, they can not at the same time stand transferred to officers or authorities appointed under W. B. Land Reforms Act".

**Bar of Civil Court's jurisdiction :**

In *Jadunath* v. *Lalmohan* [66 C. W. N. 88] the plffs had been adjudged bargadars in connection with a dispute as contemplated in sec 18. The plaintiffs thereafter brought a suit for declaration of their tenancy right and for permanent injunction restraining the defendant from dispossessing the plaintiffs.

It was observed that sec. 18 in conferring exclusive jurisdiction on the Bhagchas Officer clearly refers to an existing dispute.

It was further observed the existence of dispute is a sine-quanon of the applicability of sec. 21 and consequently the bar to jurisdiction of the Civil Court must be related to the existence of such a dispute. Where there is no dispute the bar would not be applicable. The suit therefore was held not barred u/. 21 of the Act. It was laid down that no previous order of Bhagchas

Officer, however, can be challenged in Civil Court in reference to the dispute decided therein. If there be any proceeding, that also cannot be impugned in Civil court, and the Officer or authority will be fully competent to carry on the proceeding.

*In Sharat Ch. Panda* v. *Sk. Amin Ali & others.* [66 C. N. 229] certain persons disgruntled by the award recorded by Bhagchas Board sued for a declaration that they were not bargadars under the persons found by the Board but under some others. That was the primary or main relief sought. It was held that Civil Court's jurisdiction was completely ousted. This case has been explained by *Mukherjee*, J. in *Kalipada Naskar* v. *Moni Mohan* [67 C. W. N. 1076].

In *Kalipada Naskar* v. *Moni Mohan* in a dispute between M and K the Special Tribunal under W. B. L. R. Act decided under Sec. 18 that K is not a bargadar, whereupon M instituted a suit for declaration that K and his brothers were not tenants under him and for recovery of khas possession. The Special Tribunal gave sufficient indication in his order that K was a tenant.

It was held that special Tribunal having no jurisdiction to decide whether K was tenant or not, that finding of the tribunal would not operate as res-judicata in the suit aforesaid even when the plea of res-judicata is founded on general principles[1] of law

[1] When a plea of resjudicata is based on the general principles all that is necessary to establish is that the Court that had heard and finally decided the former case was a court of competent jurisdiction, it is not necessary to establish that it has jurisdiction to try the latter suit [*Rajlakshmi* v. *Banamali Sen* (*ibid*), *Bhagwan Dayal* v. *Mst. Reoti Devi*, A.I.R. 1962 S.C. 287; *Mylavarapu* v. *Runkalakshmayya*, A.I.R. 1967 A.P. 143; *Lala Jageshwar Prosad* v. *Shyam Behari*, A.I.R. 1967 All. 125].

But this general principle of resjudicate is not applicable where previous decision has not been given in a civil suit, though the plea of resjudicate has been raised in a subsequent civil suit. When both the proceedings are civil suits the general principle has no application and the case must be confined on four corners of sec. 11 Civil Procedure Code [*Jankiram Iyer* v. *Neelkanta Iyer*, A.I.R. 1962 S.C. 633; *Gulab Chand Parikh* v. *State of Guzrat*, A.I.R. 1965 S.C. 1153; *Radheshyam* v. *Beniram Moolchand*, A.I.R. 1967 All. 28].

as laid down by *Mahajan, J.* in *Rajlakshmi* v. *Banamali* [A. I. R. 1953 S. C. 33 : 1953 S. C. A. 22 : 8 D. L. R. S. C. 75 : 1952 S. C. J. 618].

It has further been observed in *Kalipada Naskar* v. *Moni Mohan,* [67 C. W. N. 1076] that to test and apply the bar of section 21 (1) the better way is to see it whole. When the special forum declares certain persons to be bargadars, a suit by them that they are tenants may pass the bar of second part of section 21(1), a dispute on tenancy not being included in sec. 18 ; not the bar of the first part of section 21 (1) that the finding of their being bargadars shall not be questioned.

In this connection the principles laid down in the decision *Krishna Moni Dasi* v. *Basser Mondal* [A I. R. 1963 Cal. 225 (F. B.)] may be borne in mind. Where the question of exclusive jurisdiction of a tribunal is raised the following tests or fundamental principles were laid down by *Laik, J.* for ascertaining whether such jurisdiction can be assailed in Civil Court.

(1) The general law of the country is not altered by special legislation made without particular reference to it, though a statute passed for a particular purpose must, so far as that purpose extends, override general enactments.

(2) If there is a manifest absence of jurisdiction in the tribunal which makes a determination the Civil Courts will have jurisdiction to adjudicate upon the matter.

(3) It is for the Courts of general Civil Jurisdiction to determine what is the scope of the authority given to a statutory tribunal and to investigate the question as to whether a special or subordinate tribunal has acted within the limits of its jurisdiction.

(4) Even where jurisdiction is given to the statutory tribunal to determine certain facts as to give itself jurisdiction, it will be for the Court of general jurisdiction to adjudicate as to what are the powers which the statute has given to such an authority or tribunal.

(5) No tribunal of special jurisdiction can finally decide upon its own jurisdiction or give itself jurisdiction by a wrong decision a matter collateral to the merits of the case upon which the limits of its jurisdiction depend.

(6) No tribunal of inferior jurisdiction can establish its jurisdiction by proceeding on an assumed fact, which is not a fact.

(7) A statutory tribunal must act within the scope of its power given to it or limited by the statute.

(8) If the tribunal acts within the scope of its powers and commits an error the Civil Courts cannot correct it that is its orders, whether right or wrong cannot be challenged except in a manner and to the extent prescribed by the statute.

(9) The special tribunal might be invested by the legislature with exclusive jurisdiction to determine within its own authority certain matters and where it is so invested, the jurisdiction of the Civil Court must be deemed to have been taken away to that extent.

(10) A statute conferring jurisdiction under certain particular conditions, cannot be taken to confer jurisdiction also in cases which do not fall within the ambit of the conditions laid down, merely on the basis of analogy.

(11) The confiscatory rights of a special tribunal whose adjudication was declared to be conclusive, could not have immunity from the Civil Courts and at the same time disregard the provisions of the Act under which the tribunal was formed. In other words, the jurisdiction of the tribunal is statutory and the tribunal, however admirable in its intention is not entitled to go outside the provisions and in any effect to legislate for itself.

In *Sudhangshu* v. *Kangal* [69 C. W. N. 908] the suit was one for a declaration that an award under section 18 of W.B.L.R. Act was a nullity, it being obtained by fraudulent suppression of summons. It was argued before *P. B. Mukherji, J.* sitting singly that section 21 was not a bar to the maintainability of the suit as the award had been challenged as one without jurisdiction and a nullity. The plff-bhagchasi challenged further that the relationship of bhagchasi and jotedar was not subsisting between the parties. His Lordship observed "The whole purpose of the W. B. L. R. Act is that this dispute relating to Bargadars and Jotedars about termination of cultivation by the Bargadar or the division or delivery of the produce or place of storing or thrashing of the produce should be decided expeditiously and not with all the complications of a full fledged civil suit under the Civil Procedure Code. The whole intention of the Act is that they should be decided under section 18 and except an appeal provided in section 19, should finally compose the differences and should not be questioned in a Civil Court. It is inten-

ded that sections 18 and 19 will form a complete code for disposal of matters mentioned in sections 17 and 18 of the Land Reforms Act. It is therefore not in keeping with the intention of the Act to find out remnants of jurisdiction in the Civil Court in respect of those very matters covered by sections 17 and 18".

It may be found that the Statute has clearly provided a particular forum for the decision of disputes between a defined class of persons provided the disputes come within any of the categories mentioned in clauses (a), (aa), (b), (c) of sub-sec.(1) of sec. 18. The following observations from Maxwell's Interpretation of Statutes, 11th Edn., P. 123 may be useful in this context:

There are three classes of cases in which a liability may be established founded upon a statute. One is, where there was a liability existing at common law, and that liability is affirmed by a statute which gives a special and particular form of remedy different from the remedy which existed at common law : there, unless the statute contains words, which expressly or by necessary implication exclude the common law remedy, the party suing has his election to pursue either that or the statutory remedy. The second class of cases is where the statute gives the right to sue merely, but provides no particular form of remedy ; then the party can only proceed by an action at common law. But there is a third class, viz., where a liability not existing at common law is created by the statute which at the same ime gives a special and particular remedy for enforcing it.....the remedy provided by the statute must be followed and it is not competent for party to pursue the course applicable to the second class.

In the same line is the S. C. decision *Firm Radha Kissen* v. *Ludhiana Municipality* [A. I. R. 1963 S. C. 1547]. It is however settled law that the exclusion of the jurisdiction of Civil Court is not to be readily inferred, that such exclusion must either be explicitly expressed or clearly implied. Even if the jurisdiction is so excluded the Civil Courts have jurisdiction to examine into cases where the provisions of the Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure [*Secretary of State* v. *Mask*, 67 I. A. 222 : 44 C. W. N. 307 *Venkata Reddi, D.* v. *K. Subrahmanyam*, (1968), 1 Andh. L. T. 278 : (1968) 2 Andh. W. R. 192]. Relying on the aforesaid

observations of the Judicial Committee in *Secretary of State* v. *Mask P. B. Mukherji, J.* lays down in *State Medical Faculty* v. *Kshiti Bhusan,* [64 C. W. N. 842 : A. I. R. 1961 Cal. 31]. that the decision of a domestic body or a tribunal or a board can only be interfered with by the Courts of law on three main principles, (a) that such authorities have acted under bias or bad faith and malafide ; (b) that such authorities have violated the principles of natural justice in the proceedings and conclusions before it and (c) that such authority or authorities have exceeded their jurisdiction under the statutes, rules and regulations regarding their duties and procedures. The aforesaid observations of the Judicial Committee were also quoted with approval in the S. C. case [*Illuri Subbaya Chetty & Sons* v. *State of A. P.,* A. I. R. 1964 S. C. 322]. It was observed that in dealing with the question whether Civil Courts jurisdiction to entertain a suit is barred or not, it is necessary to bear in mind the fact that there is a general presumption that there must be a remedy in the ordinary Civil Courts to a citizen claiming that an amount has been recovered from him illegally and such a remedy can be held to be barred only on a very clear and unmistakable indications to the contrary. The exclusion of the jurisdiction of the Civil Courts to entertain a civil cause will not be assumed unless the relevant statute contains an express provision to that effect, or leads to a necessary and inevitable implication of that nature. The mere fact that a special statute provides for certain remedies may not by itself necessarily exclude the jurisdiction of the Civil Courts to deal with a case brought before it in respect of some of the matters covered by the statute. The validity of the adjudication of a tribunal in a Civil Court cannot be challenged on the ground that it is incorrect on its merits and as such there was non-compliance with a provision of the statute. Non-compliance with a provision of the statute must be a non-compliance with such fundamental provisions of the statute as would make the entire proceeding before the appropriate authority illegal and without jurisdiction. Similarly if an appropriate authority has acted in violation of the fundamental principles of judicial procedure, that may also tend to make the proceedings illegal and void and the infirmity may affect the validity of the order passed by the authority in question.

*Illury Subbaya Chetty's case* [A. I. R. 1964 S. C. 322] was

explained in *B. S. G. Samity* v. *Surajnath* [A. I. R. 1967 All. 216 at P. 220]. It has been observed that the Civil Courts' jurisdiction may not be taken away by making the decision of a tribunal final, because the Civil Courts' jurisdiction to examine into the order with reference to fundamental provisions of the statute, non-compliance with which would make the proceedings illegal and without jurisdiction still remains unless the statute goes further and states either expressly or by necessary implication that the Civil Courts jurisdiction is completely taken away. In other words the jurisdiction of the Civil Courts is completely barred when the statute lays down either expressly or by necessary implication that Civil Courts jurisdiction has been completely taken away, otherwise a civil suit is maintainable if the authority abuses its powers or acts in violation of fundamental principles of judicial procedure or there is such non-compliance with the fundamental principles of the statute as would make the entire proceedings before the authority illegal and without jurisdiction.

**21A.** *Temporary stay of proceedings for termination cultivation by bargadars.*— Notwithstanding anything contained in this Chapter,—

(*a*) all applications made under section 18 for the termination of cultivation by *bargadars*,

(*b*) all appeals preferred under section 19 against orders made on such applications, and

(*c*) all proceedings commenced under sub-section (2) of section 20 for execution of orders for termination of cultivation by *bargadars*,

which are pending before the appropriate authority at the date of commencement of the West Bengal Land Reforms (Amendment) Ordinance, 1969, or which may be so made, preferred or commenced after such date but before the expiry of the said Ordinance, shall be stayed for the period during which the said Ordinance continues in force.

**Scope and commencement :**

Inserted by West Bengal Land Reforms (Amendment) Ordinance, 1969 and promulgated by the Governor of West

Bengal on the 7th day of April, 1969 this section provides for compulsory stay of the following proceedings pending on the 7th day of April, 1969 or to be filed later e.g.,

(a) proceedings for eviction of bargadar before the Officer specially empowered under section 18 of the Act,

(b) proceedings in appeal before Munsif under section 19 against any order of eviction passed by an Officer under section 18,

(c) proceedings in execution before authority envisaged in section 20 (3) of the Act, for termination of cultivation by bargadar.

This statutory stay is to be operative till the date of expiry of the Ordinance aforesaid.

In general when the law is altered during the pendency of an action, the right of the parties are decided according to the law as it existed when the action was begun, unless the new statute shows a clear intention to vary such rights (Maxwell, 11th Edn., P. 212). This principle has received statutory recognition in section 8 of Bengal General Clauses Act which is modelled on section 38 of the Interpretation Act of England. By this Ordinance a clear intention to vary the right to continue the lis has been manifested.

**Statutory stay to operate till expiry of ordinance :**

The Ordinance which has inserted this section into the Act has been promulgated under clause (1) of Article 213 of the Constitution of India. Clause (2) of Art. 213 lays down when an Ordinance is to expire. It reads as follows :

*An Ordinance promulgated under this article (i.e., article 213) shall have the same force and effect as an Act of the legislature of the State assented to by the Governor, but every such Ordinance—*

(a) *shall be laid before the Legislative Assembly of the State, or where there is a Legislative Council in the State, before both the Houses, and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or if before the expiration of the period a resolution disapproving*

*it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council ; and*

(b) *may be withdrawn at any time by the Governor.*

*Explanation*.....

Subject to the limitation as to the duration of the Ordinance as laid down in clause (2) there is no other limitation upon the Ordinance making power of the Governor save those that are imposed upon the State Legislature under the Constitution (Basu on Indian Constitution (shorter Edn.), 5th Edn., P. 367). Ordinance would be held invalid for contravention of the Constitutional limitations to which the State Legislature is subject e.g., Art 14, 254(2) [*Bhupendra* v. *State of Orissa*, A.I.R. 1960 Orissa 46 at P. 54].

## CHAPTER IV.

### Provisions as to Revenue.

*[All the provisions of this chapter have been brought into force in all the districts of W. Bengal except the areas transferred from Bihar to W. Bengal under Transfer of Territories Act, 1956 with effect from* 1. 11. 1965 ; *vide notification no.* 14810 *L. Ref. dated* 25. 9. 1965 *first published in Cal. Gazette Extra Ord. Pt. I dated* 27. 9. 1965.]

**22.** *Liability to pay revenue.*—(1) A raiyat shall be liable to pay revenue for his holding.

(2) Revenue shall be the first charge on the holding.

### Notes

This section has been substituted in place of the old one by W.B.L.R. (Am.) Act, 1965 i.e., W. B. Act XVIII of 1965. The old section provided *inter alia* that a raiyat should pay revenue as determined under section 29 and until such determination should continue to pay revenue at the former rate ; when any land was claimed to have been held rent free or at a rent fixed in perpetuity before the commencement of the Act the validity or otherwise of the said claim was to be enquired into by State Govt. if and when a consession on that account was claimed by a raiyat.

**Revenue to remain first charge :**

So far as the section declares that revenue is the first charge on the holding it is parimateria with Section 65 Bengal Tenancy Act. This section 22 of the Act as also section 65 B. T. Act give no indication as to when rent or revenue becomes a first charge. But as observed in *official Trustees* v. *Purna* [34 C. W. N. 702] and *Midnapore Zemindary Company* v. *Haripada* [42 C. W. N. 967] charge created does not attach as soon as rent falls into arrear or a rent suit is brought. It attaches to the holding only when the time for enforcing the decree (or certificate) has come.

**23.** *Determination of revenue.*—(1) A raiyat shall pay as revenue for his holding the same amount which was payable by him as rent for the lands comprised in such holding immediately before the coming into force of the provisions of this Chapter.

(2) Where no rent was payable in respect of the lands comprised in such holding immediately before the coming into force of the provisions of this Chapter, the raiyat shall pay revenue at such rate as the Revenue officer may determine in the prescribed manner, having regard to the rent that was generally being paid immediately before the coming into force of the provisions of this Chapter for lands of similar description and with similar advantages in the vicinity.

**Notes**

This section has been substituted by W. B. L. R. (Am.) Act, 1965 in place of the old one. The procedure for determination of revenue is contained in Rule 15 of W. B. Land Reforms Rules. See also sections 40 to 42A, W. B. E. A. Act for determination of rent payable by a tenant to the State.

**23A.** *Abatement of revenue in respect of homestead.*—Where the holding of a raiyat comprises his homestead, the *raiyat* shall be entitled, on an application to the Revenue Officer, to have the revenue of such holding abated by such amount as bears the same proportion to such revenue as the area covered by such homestead or one-third of an acre, whichever is lesser, bears to the area of such holding :

Provided that nothing in this section shall apply where such homestead lies within—

(*a*) any area within the local limits of a municipality,

(*b*) any area constituted by the State Government as a notified area under section 93A of the Bengal Municipal Act, 1932, or

(*c*) any such area in a newly developing locality as may be specified by the State Government by notification in the Official Gazette.

**Notes**

This section has been added by W. B. L. R. (Am.) Act 1965, W. B. Act XVIII of 1965. By notification No. 11310 L. Ref. d/-5th. July 1966 all the Junior Land Reforms officers of each district of W. Bengal except the areas transferred from Bihar to W. Bengal under the Bihar & W. Bengal (Transfer of Territories) Act, 1956 have been appointed Revenue officers under sec. 23A (vide Cal. Gaz. Ext. Part I No. 545 d/- 6. 7. 1966.

**24—32.** [*Omitted by W. B. L. R. (Am.) Act, 1965 W. B. Act XVIII of 1965*)].

**33.** *Grounds for alteration of revenue.*—The revenue payable by a raiyat may be altered in the manner prescribed, by the Revenue Officer if the holding of the raiyat has increased or decreased in area due to amalgamation, purchase, partition, sub-division, acquisition or any other cause whatsoever subsequent to the determination of the revenue.

**Notes**

This section has been substituted by W. B. L. R. (Am.) Act, 1965 in place of old one which provided that revenue might be altered in any of the circumstances mentioned in clauses (a) and (b) namely, (a) that the area of the holding had increased or decreased due to amalgamation, purchase, partition, sub-division or any other cause subsequent to the settlement of the revenue ; and (b) that there had been a deduction in the yield for a period of not less than three consecutive years on account of failure of irrigational facilities or any natural causes.

**34.** *Bar of jurisdiction of Civil Court.*—No suit or other legal proceedings shall be instituted in any Civil Court in respect of the determination of any revenue or the omission to determine any revenue under this Chapter.

**Notes**

This section has been substituted in place of the old one. The old section was not so exhaustive as the present one. The

old section ousted the jurisdiction of Civil Court in certain matters only which were—

(*a*) determination of revenue-rate :
(*b*) settlement of any revenue :
(*c*) omission to determine revenue rates ; and
(*d*) omission to settle revenue.

The present section is more comprehensive than the old one inasmuch as in respect of determination of *any* revenue or the omission to determine *any* revenue under Chapter IV the jurisdiction of Civil Court is barred. For the power of Civil Court where the exclusive jurisdiction of a tribunal is raised see *Krishna Moni Dassi* v. *Basser Mondal* [A. I. R. 1963 Cal. 225 (F. B.)] as also discussion under sec. 21 at P. 131.

**35.** *Instalment, time and place for payment of revenue.*— (1) A raiyat shall pay revenue in such instalments, in such manner and at such time as may be prescribed.

(2) Payment of revenue shall be made at the village tashil office or at such other place and in such manner as may be prescribed.

(3) Any instalment of revenue or part thereof which is not duly paid at the prescribed time shall be deemed to be an arrear.

**Notes**

Secs. 35, 36 and 37 deal with payment of revenue in instalments, time of payment, grant of revenue-receipts, allowance of rebate on due payment, and interest on arrears. Grant of rebate of 5% of the amount of revenue is an innovation which is expected to encourage *raiyats* in punctual payment of their revenues. Rule 17 of W. B. L. R. Rules provide the rules relating to manner, time and place of payment of instalments of revenue. The said Rule lays down that it is the raiyat who would pay or send the revenue by postal money order to teshildar. It may be recalled that in the matter of payment of rent or revenue the law is that the debtor is to seek the creditor [*Banshilal Aburchand* v. *Gulam Mahammad,* 30 C. W. N. 577 P. C. ; *Akbar Khan* v. *Attar Singh,* A. I. R. 1963 P. C. 171 : 40 C. W. N. 997 : 162 I. C. 454 : 63 C. L. J. 541]. Landlord is not bound to receive rent if it is tendered by a stranger to the

contract of tenancy, payment to the landlord by a third party of the amount of rent does not discharge the tenant unless it is made by the prayer as agent for the tenant, or with his prior authority or subsequent ratification [Halsbury's Laws of England, 3rd. Edn., Vol. 23, Para 1293, P. 545].

**36.** *Raiyat entitled to a receipt for revenue.*— Every *raiyat* shall on making payment of revenue be entitled to obtain forthwith a written receipt in the prescribed form for the amount paid by him, signed by the person authorised to make collection of revenue.

**Notes**

See notes under sec. 35, *ante*.

It will be the duty on the part of the raiyat making payment of revenue to insist and obtain a revenue-receipt signed by the person authorised to make the collection. Plea of payment without receipt will be of no avail. The receipt must be in a form prescribed by rules made by the State Government.

**37.** *Rabate on payment in time and interest on arrears.*— (1) Every *raiyat* who makes payment of revenue within the prescribed period shall be entitled to a rebate of five per centum of the amount of revenue.

(2) An arrear of revenue shall bear simple interest at the rate of six and a quarter per centum per annum from the due date up to the date of payment.

**Notes**

This section provides for reward for prompt payment of revenue in the shape of grant of rebate and also punishment for delayed payment by way of imposition of interest on the arrear. There can be no relaxation in either case.

See also notes under sec. 35, *ante*.

**38.** *Procedure for recovery of arrears of revenue.*— All arrears of revenue shall be deemed to be public demand payable to the Collector and shall subject to such rules as may be made in this behalf, be recoverable under the Bengal Public Demands Recovery Act, 1913 (Ben. Act. III of 1913).

Provided that no *raiyat* shall be liable to be arrested or detained in civil prison or to have any movable or immovable property other than the holding excluding the homestead to which the arrears of revenue relate, attached or sold in pursuance of any order under the said Act :

Provided further that before the holding is sold the raiyat shall, on an application made by him, be allowed to pay off the arrears in such instalments as may be prescribed :

Provided also that whenever a holding is sold in pursuance of this section, the purchaser may annul any incumbrance on the holding in the manner prescribed.

**Notes**

Arrears of revenues shall be deemed to be public demands and be recoverable under the Bengal Public Demands Recovery Act (Act III of 1913) by means of certificates filed under sec. 4 of that Act. For definition of "public demand" see cl. (6) of sec. 3 read with Schedule I of that Act. The provisions of the P. D. R. Act together with the provisions of the rules prescribed in this behalf under this Act constitute the complete procedure for recovery of arrears of revenue.

Sec. 22 makes revenue the first charge upon the holding. This section dispenses with the personal liability of the *raiyat* for arrears of revenue. The holding in arrear excluding the homestead of the *raiyat* shall only be available for attachment or sale in execution of a certificate for arrears of revenue. This section further provides that the defaulting *raiyat* shall be granted instalments to pay off his arrears if he so applies before the sale of his holding in execution. Under the Public Demands Recovery Act the Certificate Officer has been given a discretion as to grant of instalments (see rule 80). Here the provision is mandatory.

The third proviso added by W. B. L. R. (Am.) Act, 1965 i.e., W. B. Act VIII of 1965 empowers a purchaser to annul any incumbrance on the holding. For meaning of "incumbrance" see clause (6A) of section 2 of the Act.

## CHAPTER V.

### Consolidation of lands comprised in holdings, and Co-operative Farming Societies.

(*Sections* 39, 40, 41 & 42 *of this chapter have been brought into force in all the districts of W. Bengal except in the areas transfererred from Bihar to W. Bengal under Transfer of Territories Act,* 1956 *with effect from* 1. 5. 1966 *by notification no* 6464 *L. Ref. d/*-23. 4. 1966).

**39.** *Acquisition of holding for consolidation.*— The State Government may—

(*a*) on the representation of *raiyats* in any area, or

(*b*) on its own motion,

acquire the lands in any area on payment of compensation to the *raiyats* owning them when the lands comprised in the holdings of the *raiyats* in such area are not in compact blocks, if the State Government is of the opinion that the lands comprised in the holding in such area should be consolidated :

Provided that the State Government shall not undertake consolidation of lands as aforesaid unless two-thirds or more of the owners of the holdings which will be affected by such consolidation agree to it.

#### Notes

Effective cultivation and consequent normal production are very likely to be hampered when the lands comprised in a holdings for the purpose of consolidation and redistribution of one another. In order to meet this contingency this section and the succeeding one make provisions for State acquisition of holdings for the purpose of consolidation and redistribution of lands of each holding in a compact block.

The initiative must be taken by the *raiyats* of the area concerned by making a representation to the State Government for acquisition. The State Government may also proceed *suo*

*motu*. But no consolidation will be undertaken by the State Government unless at least two-thirds of the *raiyats* to be affected thereby agree to it.

The powers of the State Government under this section may be delegated to the prescribed authority ; see sec. 53, post.

**40.** *Redistribution of land after acquisition.*— On such acquisition being made, the State Government shall re-arrange the holdings so that the lands comprised in each is (are ?) in a compact block and re-allot them to the *raiyats* whose lands have been acquired, in such manner as it thinks fit, ensuring that each *raiyat* gets a holding comprising the same area, and, as far as possible, lands of the same quality and value as before the consolidation :

Provided that no *raiyat* shall be entitled to receive any land in excess of the area held by him prior to acquisition :

Provided further that on such allotment being made there shall be deducted from the amount of compensation payable to a *raiyat* under section 39 the value of the land alloted to him after acquisition.

**Notes**

This section provides for redistribution of lands acquired under section 39 and lays down the procedure the State Government is to follow in this connection. The area of the re-arranged holding of a *raiyat* should in no case exceed the area previously held by him and the quality and value of the lands comprised in such holding should, as far as possible, be same as before consolidation.

As regards realisation of the value of the re arranged holding the second proviso to this section provides that such value shall be deducted from the amount of compensation payable under the preceding section, and sec. 42, *post*, provides that when the value exceeds the amount of compensation, the excess value shall be recoverable in such instalments as may be prescribed and if not paid within the time allowed shall be recoverable as a public demand, unless the *raiyat* declines to accept settlement of land allotted to him.

The powers of the State Government under this section may be delegated to the prescribed authority ; see sec. 53, *post.*

**41.** *Transference of incumbrances on holding.*— If the holding of a raiyat which is acquired for the purposes of consolidation is subject to any incumbrance, such incumbrance shall be deemed to be transferred and attached to the land which is alloted to the raiyat after acquisition and to the compensation, if any, payable to him under this Chapter and shall cease to have any effect against the land from which it has been so transferred.

**Notes**

This section deals with the effect of consolidation on an incumbrance existing upon the original holding. The land of the original holding be absolved from all liabilities and the incumbrance shall follow the reconstituted holding and the compensation, if any, payable to the owner thereof under sec. 39 read with sec. 40.

**42.** *Recovery of the excess value of allotted land.*— If the value of the land allotted to a *raiyat* after acquisition be greater than the value of the land acquired from such *raiyat*, the difference in value shall be recoverable from him in such instalments as may be pescribed and if such difference be not paid within the time allowed for the purpose, it shall be recoverable as a public demand payable to the Collector unless the *raiyat* declines to accept settlement of the land allotted to him.

**Notes**

This section prescribes the mode of recovery of the excess value if the value of the re-allotted land of the holding exceeds the value of the land of the previous holding and if the *raiyat* accepts settlement of the land allotted to him.

Second proviso to sec. 40 prescribes the mode of recovery of the value of the re-arranged holding by deducting it from the compensation payable under sec. 39, where the value is less than or equal to the amount of the compensation.

**43.** *Formation of Co-operative Farming Societies.* —(1) Any seven or more *raiyats* owning lands in a compact block or intending to acquire such land, may form themselves in to a Co-operative Farming Society and apply in writing, in the prescribed form, to the Registrar, Co-operative Societies, for the registration of such society under the Bengal Co-operative Societies Act, 1940 (Ben. Act XXI of 1940).

(2) The Registrar may, after such enquiry as he may deem fit, register the society under the Bengal Co-operative Societies Act, 1940, and grant a certificate of registration and on such registration the provisions of the Bengal Co-operative Societies Act, 1940, subject to the special provisions of this Act, shall apply to such a society and the society may enlist new members in accordance with the rules and bye-laws under the said Act for the time being in force.

(3) When a Co-operative Farming Society has been registered under sub-section (2), all lands, excluding homesteads, belonging to the members thereof and forming one compact block, whether owned by them at the time when they became such members or acquired by them subsequently, shall vest in the society, and no member shall be entitled to hold in his personal capacity and land, excluding homestead, which together with any land belonging to him but vested in the society under the provisions of this sub-section exceeds twentyfive acres so long as he continues to be a member of the society.

(4) When the lands belonging to a member of a Co-operative Farming Society vest in such society, there shall be allotted to him shares the value of which will, as far as possible be equal to the value of the lands of the member vested in the society.

(5) Notwithstanding anything elsewhere contained in this Act, no Co-operative Farming Society shall have the right to acquire or hold any land except the land which vests in it under sub-section (3).

(6) The provisions of section 6 shall apply *mutatis mutandis* to any land held by a member of a Co-operative Farming Society in his personal capacity in excess of the limits prescribed by sub-section (3) of this section.

**Notes**

A new class of land-holders in the shape of Co-operative Farming Societies has been sought to be brought into existence with certain facilities given to them which are denied to the individual *raiyats*. Cultivation by large areas in compact blocks with modern scientific materials and implements, economic as it is, is sure to enhance the productive power of the soil and the extra man power utilised in the indigenous system may otherwise be profitably lent. Owing to illiteracy and other practical difficulties the general mass of the peasantry has failed to keep pace with the progress of time. The law has now taken up the matter into its own hand and by way of encouragement for cultivation on a co-operative basis has offered substantial concessions and facilities to the Co-operative Farming Societies. No member of a Society, however, shall be allowed to hold land, excluding his homestead, both in his personal capacity and as a share-holder of the Society in excess of 25 acres in all. Any contravention of this provision will invoke the operation of sec. 6, *i.e.*, will entitle the State Government to acquire the excess in accordance with the provisions of sec. 6.

**Co-operative farming society : meaning of :**

A co-operative farming society as defined in clause (db) of section 2 of Bengal Co-operative Societies Act is as follows :

Co-operative farming society means a co-operative society which has its principal object the organised cultivation of lands held by the society or its members, jointly by the members or otherwise, with a view to increasing agricultural production and employment by proper utilisation of land, labour and other resources.

This clause has been inserted by Bengal Co-operative Societies (Amendment) Act. 1965. A society so formed must be registered under section 11 (1) read with the Rules of the

Bengal co-operative Societies Act. The minimum number of raiyats who are entitled to form themselves into a co-operative farming society is seven and their qualification will be that they are owners of the land so situated as to form one compact block or they intend to acquire such lands.

All societies to be registered must fulfill the requirements of all other provisions of the Act and the Rules. Thus Rule 7 provides that every primary society shall have atleast fifteen persons above the age of 18 years as its members. An exception to this has been provided to a co-operative farming society which may be registered with seven or more persons, provided they are considered fit for a successful functioning of the society. An interesting question may arise if the word person in Rule 7 (i)(a) means only natural person or it includes artificial persons as well, and if artificial persons are included in it whether the framers intended to apply the requirement of the age of 18 years to them.

**Effect of registration**

Registration renders the society a body corporate by the name under which it is registered, with perpetual succession and a common seal and with power to hold property, to enter into contracts, to institute and defend suits and other legal proceeding and to do all things necessary for the purposes for which it was constituted (see sec. 19, Bengal Co-operative Societies Act, 1940). On registration of a Society all lands, excluding homesteads belonging to the members thereof, forming one compact block shall vest in the society. The society shall have no right to acquire or hold any other land. Each member will be allotted shares of the value equal to the value of his land vested in the society. The surplus land, if any, of his holding not falling within the compact block of, and as such not vesting in, the Society, will be held by the *raiyat* in his personal capacity.

**44.** *Restriction on transfer of shares in a Co-operative Farming Society.*—(1) The shares held by a member of a Co-operative Farming Society shall not be transferred to any person other than another member of the society or a *raiyat* or other person residing in the locality in which the society has been established.

(2) Subject to the restrictions mentioned in sub-section (1), the shares held by a member of a Co-operative Farming Society shall be transferable and heritable.

**Notes**

The shares of a member in a Co-operative Farming Society have been made transferable and heritable subject to the restrictions that they are only transferable to another member of the Society or to a *raiyat* or other person resident in the locality in which the society is established. The term "heritable" refers to intestate succession and excludes testamentary succession which comes within the purview of transfer.

An instrument of transfer of shares of a Co-operative Farming Society does not require registration. Sec. 43, *ante*, makes the provisions of the Bengal Co-operative Societies Act, 1949 applicable, subject to the provisions of this Act, to a Co-operative Farming society on its registration [see sub-sec. (2) of sec. 43]. Sec. 52 of the Bengal Co-operative Societies Act, 1940 runs as follows :—

"52. *Exemption from compulsory registration of instruments relating to shares debentures of co-operative society.*— Nothing in clauses (*b*) and (*c*) of the Indian Registration Act, 1908 (XVI of 1908) shall apply to—

(*a*) any instrument relating to shares in a co-operative society notwithstanding that the assets of such society consist wholly or in part of immovable property ; or

*"

**45.** *Dissolution of a Co-operative Farming Society.*— No Co-operative Farming Society established in accordance with the provisions of this Act shall be wound up or dissolved except under the orders of the State Government.

**Notes**

In order to ensure stability and smooth running of a Co-operative Farming Society the power of winding it up or dissolving it has been made to rest with the State Government.

The State Government will be the sole authority to pass orders for winding up or dissolution of a Society. This will be a check upon indiscriminate and injudicious winding up.

**46.** *Transfer of lands on dissolution of Co-operative Farming Society.*—When a Co-operative Farming Society is wound up or dissolved, the prescribed authority shall allot to its members, in such manner and subject to such rules as may be prescribed, all the lands vested in the society and the rules may provide for equitable allotment of lands to the members having regard to the area and the quality of lands belonging to them before the vesting of such lands in the society.

**Notes**

This section provides for allotment of all the lands vested in a Society after its dissolution to the members thereof in accordance with the prescribed rules.

**47.** *Revenue payable by Co-operative Farming Society.*—When a Co-operative Farming Society is established under the provisions of this Act, the aggregate of the revenues which would have been payable by its mem bers for their lands, if such lands had not vested in the society, shall be the revenue payable by the society for the lands vesting in it, subject to such reduction as may be allowed under section 48.

**Notes**

This section in clear and unambiguous language states what will be the revenue payable by a Co-operative Farming Society. Increase in area on account of the formation of a society will not attract the operation of secs. 29 and 33, *ante*.

The revenue payable by a Co-operative Farming Society for the lands vesting in it will be the aggregate of revenue which would have been payable by the members thereof if such lands had not vested in the Society. This revenue will be subject to reduction to be allowed by the State Government under section 48.

**48.** ***Concession and facilities for a Co-operative Farming Society.***—(1) A Co-operative Farming Society established under this Act shall be entitled to such concessions and facilities from the State Government as may be prescribed.

(2) Without prejudice to the generality of the foregoing provisions, such concessions and facilities may include—

(*a*) such reduction of revenue as Government may allow ;

(*b*) free supply of seeds and manure for the first three years and thereafter at concessional rates ;

(*c*) free technical advice by the experts of the State Govrnment ;

(*d*) financial assistance on such terms and conditions as may be prescribed ;

(*e*) arrangements for better marketing.

**Notes**

This section provides that a Co-operative Farming Society established under this Act shall be entitled to certain concessions and facilities to be prescribed by the State Government and of them specifically mentions in sub-sec. (2) 5 items. The concessions and facilities enumerated in these items are substantial and are expected to give impetus to the *raiyats* to form themselves into Co-operative Farming Societies. Another encouragement in this direction is to be found in sec. 49 which provides that as amongst rival candidates for settlement of lands at the disposal of the Government, those having other qualification in this respect, who intend to form themselves into a Co-operative Farming Society, will have preference.

## CHAPTER VI.

### Principles of distribution of lands.

(*This chapter contains only one section viz., sec.* 49 *and this has been brought into force with effect from* 7. 6. 1965 *by Notification No.* 8144. *L. Ref. d/-* 4. 6. 1965 *in all the districts of W. Bengal except the areas transferred from Bihar ti W. Bengal by Transfer of Territories Act* 1956, *Act* 40 *of* 1956)

**49.** *Principles of distribution of lands.*—Subject to the provisions of this Act, settlement of lands which are at the disposal of the State Government shall be made, on such terms and conditions and in such manner as may be prescribed, with persons who are residents of the locality where the land is situated and who intend to bring the land under personal cultivation and who own no land or less than two acres of land, preference being given to those among such persons who form themselves into a Co-operative Farming Society :

Provided that no premium shall be charged for such settlement.

### Notes

All the estates and rights of intermediaries in West Bengal with the exception of the area under the administration of the Calcutta Corporation having vested in the State under the W. B. Estates Acquisition Act, 1953, many *khas* lands of proprietors and intermediaries in excess of those retained by them under sec. 6 of that Act have come into the hand of the Government. Under this Act excess lands of *raiyats* beyond the prescribed limit of 25 acres will go to Government. All these lands shall be available for distribution to the peasantry without any premium. This section deals with the principles which shall guide the State Government in distributing the lands. The terms and conditions of distributions shall be in accordance with the prescribed rules. The qualifications of candidates for such lands shall be that—

(1) they must be residents of the locality in which the land in question is situated ;

(2) they intend to bring that land under personal cultivation ; and

(3) they have no or less than two acres of land.

As amongst the candidates preference will be given to those who form themselves into a Co-operative Farming Society. Under section 13 since repealed provisions were made for distribution of lands of a raiyat belonging to a scheduled tribe forfeited to the Government. But under the law as it now stands there is no scope of any such forfeiture.

## CHAPTER VII

### Maintenance and revision of the record-of-rights.

[*With effect from* 1.11.65 *the provisions of this Chapter have been brought into force in all the districts of W. Bengal except in the areas transferred from Bihar to W. Bengal under the Bihar and W. Bengal Transfer of Territories Act*, 1956 (*Act* 40 *of* 1956) *by notification no.* 14810-*L. Ref., d/-* 25.9.65 *first published in Cal. Gazette, Ext. Ord., Pt. I, d/-* 27.9.65.]

**50.** *Maintenance of the record-of-rights.*— The Revenue Officer especially empowered by the State Government in this behalf shall maintain up-to-date in the prescribed manner the village record-of-rights by incorporating therein the changes on account of—

(*a*) mutation of names as a result of transfer or inheritance;

(*b*) partition, exchange, or consolidation of lands comprised in holdings, or establishment of Co-operative Farming Societies;

(*c*) new settlement of lands or of holdings;

(*d*) variation of revenue;

(*e*) alteration in the mode of cultivation, for example by a *bargadar*;

(*f*) such other causes as necessitate a change in the record-of-rights.

#### Notes

The provision of this section is very important inasmuch as it enjoins the maintenance of village record-rights in an up to-date manner with the changes enumerated in cls. (*a*) to (*f*) occurring from time to time incorporated therein. Under the B. T. Act there being no provision to keep record-of-rights up-to-date in the way outlined in this section, great difficulties had to be faced in finding out the existing state of affairs.

Section 6 Land Records Maintenance Act (Act III of 1805) stands as follows :

Every tenure holder, raiyat at fixed rates and occupancy raiyat, who transfers his tenure or holding, or any part thereof, and every person claiming to be in possession of any tenure or holding as a tenure holder, raiyat at fixed rates, or occupancy raiyat in consequence of a transfer or of intestate or testamentary succession shall, within four months from the date upon which he gave or took possession, as the case may be, give notice of the fact to the Registrar of Mutations. . . . . .

Provided further that when an instrument effecting a transfer of tenant right has been registered under the provisions of the Indian Registration Act, all persons are released from the obligation of giving notice under the section in respect of the transfer.

Section 8 Land Records Maintenance Act made it obligatory for the Registrar of Mutations to record the change on receiving the notice under section 6, in the Mutation Register. Since sections 12, 18, 26C, Bengal Tenancy Act provided that transfer of a tenure or part thereof or any holding of a raiyat at fixed rates by sale gift or mortgage ; and all transfers of a holding or part thereof by an occupancy raiyat, are compulsorily registrable, section 6 of Land Records Maintenancy Act so far as it relates to transfer inter vivos became redundant.

**51.** *Revision or preparation of the record-of-rights.*— (1) The State Government may, in any case if it so thinks fit, make an order directing that record-of-rights in respect of any district or part of a district be revised or prepared by a Revenue officer in accordance with the provisions of this Chapter and such rules as may be made by the State Government in this behalf.

(2) A notification in the *Official Gazette* of an order under sub-section (1) shall be conclusive evidence that the order has been duly made.

(3) When an order is made under sub-section (1), the Revenue Officer shall record in the record-of-rights to be revised or prepared in pursuance of such order, such particulars as may be prescribed.

**Notes.**

By W.B.L.R. (Am.) Act, 1965, i.e., W. B. Act XVIII of 1965 this section has been substituted in place of the old one which provided for revision of record-of-rights whenever the State Govt. thinks fit to do so, the manner and mode being prescribed by rules.

Sub-section (1) of this section virtually enacts the old section. Sub-section (2) lays down that the publication of an order in the Official Gazette is a conclusive evidence of the making of the order. Sub-section (3) authorises the Revenue Officer to record in the record-of-rights only those particulars as may be prescribed and no other.

**51A.** *Draft and final publication of the record-of-rights.* —(1) When a record-of-rights has been revised or prepared, the Revenue Officer shall publish a draft of the record so revised or prepared in the prescribed manner and for the prescribed period and shall receive and consider any objections which may be made during such period to any entry therein or any omission therefrom.

(2) When all such objections have been considered and disposed of according to such rules as the State Government may make in this behalf, the Revenue Officer shall finally prepare the record and cause such record to be finally published in the prescribed manner and make a certificate stating the fact of such final publication and the date thereof and shall date and subscribe the same under his name and official designation.

(3) Seperate publication of different parts of draft or final records may be made under sub-section (1) or sub-section (2) for different local areas.

(4) An officer specially empowered by the State Government may, on application within one year from the date of final publication of the record-of-rights under sub-section (2), revise an entry in the record finally published in accordance with the provisions of sub-section (2) after giving the persons

interested an opportunity of being heard and after recording reasons therefor.

(5) Any person aggrieved by an order passed in revision under sub-section (4) may, within such period and on payment of such court-fees as may be prescribed, appeal in the prescribed manner to a Special Judge appointed under section 51D for the purpose of this section.

(6) The certificate of final publication referred to in sub-section (2), or in the absence of such certificate, a certificate signed by the Collector of any district in which the area to which the record-of-rights relates is wholly or partly situate, stating that a record-of-rights has been finally published on a specified date, shall be conclusive proof of such publication and of the date thereof.

(7) The State Government may, by notification in the *Official Gazette*, declare with regard to any area specified in the notification that the record-of-rights for every village included in such area has been finally published and such notification shall be conclusive proof of such publication.

(8) In any suit or other preceeding in which a record-of-rights revised or prepared and finally published under this Chapter, or a duly certified copy of the record or an extract therefrom, is produced, such record-of-rights shall be presumed to have been finally published unless such publication is expressly denied.

(9) Every entry in the record-of-rights finally published under section (2) including an entry revised under sub-section (4) or corrected under section 51B shall, subject to any modification by an order in appeal under sub-section (5), be presumed to be correct until it is proved by evidence to be incorrect.

**Notes**

This section has been added by W.B.L.R.(Am.) Act, 1965, Act XVIII of 1965. It is *pari materia* with sections 103A and 103 B, Bengal Tenancy Act. Sub-sections (1) to (2) & (4)

to (5) afford the parties an opportunity of correcting mistakes in the record-of-rights before it is finally published. A decision of an objection under this section has no finality and accordingly cannot operate as *res-judicata* [*Kurban* v. *Jafar, (1901) 28* Cal. 471].

Sub-sections (6) to (8) deal with the proof of final publication of record-of-rights and sub-section (9) provides that every entry in a finally published record shall be presumed to be correct unless proved by evidence to be incorrect.

**Evidentiary value of draft record :**

Though entries in the draft record-of-rights do not carry any presumption of correctness it is admissible in evidence under section 35, Evidence Act [*Haridas Ghosh* v. *Kishen Chand*, A. I. R. 1952 Cal. 393]. When the correctness of the finally published record is challenged the draft record is admissible to show the nature of entry made in the earlier proceeding before the final publication [*Adu* v. *Hiralal*, 33 C. W. N. 196]. In *Adu's case* their Lordships criticised certain contrary observations in *Lakhinath* v. *Nabadwip* [31 C. W. N. 192] and observed "On principle it is difficult to find how it can be said that the materials upon which the entry has been made cannot be looked into for the purpose of determining whether the entry itself is correct or not. The question of sufficiency or insufficiency of those materials is of course different."

**Conflict between two records :**

When there is a conflict between an old record-of-rights and a recent one, the recent record is to be presumed to be correct unless it is proved by evidence to be incorrect and the burden of proof to show it is incorrect is on the party challenging the recent record-of-rights [*Bhupendra* v. *Rahman* 61 C.L.J. 18 ; *Matukdeo* v. *Sadhusaran*, 134 I. C. 957]. In case of conflict between two records the latter prevails [*Durga Singh* v. *Tholu*, A. I. R. 1963 S. C. 361].

**Presumption if backward :**

The record is presumptive evidence of the state of things at the date of its preparation and not to any anterior time [*Berojullah* v. *Ayatullah*, 66 C. L. J. 455]. The rule of evidence

is in favour of presuming the continuity of things shown to exist at a particular date but there is no rule of evidence by which one can presume backwards [*Manmotha* v. *Girish*, 38 C. W. N. 763 ; see also *Macdonald* v. *Mahmudin*, 50 C. W. N. 388].

**Onus : how rebutted :**

The entry in the record-of-rights is presumed to be correct until it is proved to be incorrect by evidence [*Mahan Krishna* v. *Rani Bhubaneswari*, 35, C. W. N. 921(P.C.) : A. I. R. 1931 P. C. 221]. As observed in *J. N. Malik* v. *S. N. Palit* [69 C. W. N. 210] it is not for the party relying on such presumption to prove the foundation or basis of correctness of the entries of the record-of rights. In that decision Laik, J. took into consideration a large number of decisions and elaborately discussed the point. To quote His Lordship "In the decision of *Rai Kiran Ch. Bahadur* v. *Srinath Chakravorty*, [31 C. W. N. 135 : A. I. R. 1927 Cal. 210] the following portion occurs towards the end of the judgment '.....When the matter is investigated by the Civil Court and the parties adduce their evidence on the point in controversy the entry looses its weight when the evidence discloses no foundation for it' : Though it is a Bench Decision of this Court, I must say that the expression is not happy and it requires explanation particularly in view of other Bench decisions of this Court. The other Bench decision of this Court, in the case of *Lakhinath* v. *Nabadwip* [31 C. W. N. 192 : A. I. R. 1927 Cal. 268] though reported late but is earlier in point of time. This case has not however been considered in the case of *Lakhinath* (*Supra*) that the party challenging the entry in the record-of-rights must adduce evidence to rebut the presumption of its correctness. Of course it has been noticed in this decision and an observation has also been made to the effect that the procedure adopted, did not support the entry as finally published but I think that the said observation is of no moment for the principle ultimately laid down in the said decision. The case was considered by another Bench decision of this Court in the case of *Adu Mondal* v. *Hiralal* [33 C. W. N. 196 : A. I. R. 1929 Cal. 255] where it was held that the proposition as to the other matters referred to in the said decision of *Lakhinath* would not be taken as one of universal application. Chief Justice Rankin presiding in a Letters Patent Appeal Bench, a year after, in the

case of *Abdul* v. *Eakub* [33 C. W. N. 1193 : A. I. R. 1930 Cal. 315] held upsetting the judgment of Mitter, J. that the party which challenged the entry in the record-of-rights, was to show in one way or the other, that the entry was wrong. The decision prior to this were not referred to in this case. In the meantime in the Bench decision in the case of *Madhab Ch.* v. *Tilottama* [A. I. R. 1928 Cal. 751] the principle had been laid down to the effect that it is only for the party, on whose behalf the record-of-rights has been made, to show that the entry is still correct. In another Bench decision in the case of *Girish* v. *Girish* [34 C. L. J. 68 : A. I. R. 1932 Cal. 6] their Lordships entertained the contention that there was no evidence before the settlement officer to justify him in recording the entry. The judgment of Rankin C. J. was sought to be distinguished by S. N. Guha, J. sitting singly in the case [A. I. R. 1933 Cal. 772]. But really, it is not a distinction as his Lordship had to and did in fact accept the principle as laid down by Rankin, C. J. To complete the discussion I may refer to the Bench decision of this Court in the case of *Debendra* v. *Promoda Lahiry* [37 C. W. N. 810 : A. I. R. 1933 Cal. 879] in which the observation appears to the effect that, if a foundation of a settlement record of rights is found to be rotten then the presumption arising from the record of rights would be more than rebutted."

**To what entries the presumption relates :**

Sub-section (3) of section 51 provides that the authority is entitled to make those entries only which are prescribed by rules. An entry in a matter not prescribed by rules has no presumption to correctness but is admissible in evidence under section 35 of Evidence Act [*Pratap* v. *Jagadish,* 40 C. L. J. 331 ; *Fazlur* v. *Gulam,* A. I. R. 1926 Cal. 862].

**Presumption of Record-of-rights vis-a-vis the decisions of Civil Court :**

Presumption referred to above is applicable to a suit which has been instituted before the publication of record-of-rights in which the entry is contained. It does not matter whether the publication of the record-of-rights had or had not been made until after the suit had been instituted. This principle is deducible from *C. R. Macdonald* v. *Babulal Purvi* [4 C. L. J. 519]. Order 41 Rule 27 Civil Procedure Code empowers an Appellate

Court to admit additional evidence in a suit in Appellate stage. Record-of-Rights published after the decision by the trial Court but before the judgment being pronounced by lower Appellate Court and which the party with all due diligence could not produce should be admitted in evidence under order 41 Rule 27 C. P. C. [*Indra Bhusan Saha* v. *Janardan Saha*, A. I. R. 1924 Cal. 101 : 28 C. W. N. 945].

But when a decision has already been given by a court and the R. O. R. is prepared ignoring or disregarding the decision, it cannot carry any presumption of accuracy because such a presumption can only arise when there is no previous adjudication of the questions by a properly constituted Civil Court ; there cannot be any presumption when it is patently and expressly in conflict with the decision of a civil court [*Kazi Mohammad* v. *Sibram Bandopadhaya*, A.I.R. 1967 Cal. 10 : 70 C.W.N. 1066].

**51B.** *Correction of entry in record-of-rights.*— Any Revenue Officer specially empowered by the State Government in this behalf may, of his own motion at any time or on application within one year from the date of certificate of the final publication of the record-of-rights under sub-section (2) of section 51A, correct any entry in such record-of-rights which he is satisfied has been made owing to a bonafide mistake :

Provided that no such correction shall be made if an appeal affecting such entry has been made under sub-section (5) of section 51A or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

**Notes**

This section has been added by W.B.L.R. (Am.) Act, 1965, W. B. Act XVIII of 1965. It may be compared with section 45 West Bengal Estates Acquisition Act.

**51C.** *Bar of jurisdiction of Civil Court in respect of certain matters.*— When an order has been made under sub-section (1) of section 51 directing revision or preparation of a record-of-rights, no Civil Court shall

entertain any suit or application for the determination of the revenue or the incidents of any tenancy to which the record-of-rights relates, and if any suit or application in which any of the aforesaid matters is in issue, is pending before a Civil Court on the date of such order, it shall be stayed and it shall, on the expiry of the period prescribed for an appeal under sub-section (5) of section 51A or when such an appeal has been filed under that sub-section, as the case may be, on the disposal of such appeal, abate so far as it relates to any of the aforesaid matters.

*Explanation.*— In this section "suit" includes an appeal.

**Notes**

This section is analogous to section 46 W. B. Estates Acquisition Act which bars the jurisdiction of Civil Court in three matters, namely, when the suit or application is for (*a*) the determination of rent, or (*b*) the determination of the status of the tenant, or (*c*) the determination of the incidents of the tenancy ; whereas the present section bars in two matters, namely, (*a*) the determination of revenue, and (*b*) the determination of the incidents of the tenancy.

If any suit or application for the decision of any of the above matters is pending before a Civil Court on the date of an order under section 51 (1) of the Act, it must be stayed and it shall on the expiry of the time prescribed for an appeal under sub-secion (5) of section 51 or when any appeal has been filed under that sub-section on the disposal of such appeal, abate so far as it relates to any of the above matters.

**Bar of jurisdiction when applicable :**

*Lala Gangaram* v. *Krishna Gopal* [59 C. W. N. 1006] was a suit for recovery of khas possession of a colliery and the relevant point involved raised merely the question of existence or non-existence of the tenancy, as distinguished from the incidents of the tenancy. It was held that the bar was not applicable. In *D. N. Bose* v. *Sk. Safui* [63 C. W. N. 521] it was urged that the words *"for the determination of rent or determination of the status of any tenant or the determination of the incidents*

*of any tenancy to which the records-of-right relates"* occurring in section 46 W. B. Estates Acquisition Act mean only such suits in which the determination of the rent or the determination of the status of any tenant or the determination of the incidents of any tenancy to which the records-of-right relates is in terms prayed for. Their Lordships (Das Gupta, & Guha, JJ.) rejecting the contention held, the provisions apply to all suits where any of the questions mentioned above has to be determined for a proper decision of a suit. In *Panchanan Pramanik* v. *Kishori Mohon* [64 C. W. N. 83] the sole question was the existence or non-existence of the tenancy and did not involve determination of the incidents of any tenancy. Bar was held inapplicable. G. K. Mitter, J. sitting singly laid down in *Kalipada Mondal* v. *State of W. Bengal* [64 C. W. N. 561] a suit in which the determination of rent or/and determination of incidents of any tenancy to which record-of-rights relates is or are involved would be barred. In the Div. Bench decision in *Manmoth Nath Koyal* v. *Hazi Seikh* [66 C. W. N. 121] the question of bar of jurisdiction was elaborately discussed by P. N. Mookherjee, J. and it was laid down that the test is to find out whether in the proceeding in question before the Civil Court, the matters in issue involve or comprise the question of determination of incidents of tenancy and, once that test is satisfied, the suit or proceeding concerned must be stayed. Contrary observations in *Sripati Charan* v. *Narendra Nath* [60 C. W. N. 1070 ; *Beni Madhab* v. *Sm. Anila Bala* [61 C. W. N. 349] and *Sudhir Chandra* v. *Chhota Govinda* [ 63 C. W. N. 83] were disapproved and were overruled in *Manmoth Nath* v. *Hazi Seikh* [66 C. W. N. 121].

In view of the words *"until it is proved to be incorrect"* occurring in sub-section (4) of section 44 W. B. Estates Acquisition Act—which words also occur in sub-section (9) of section 51A of this Act—in *Kalipada Mondal* v. *State of West Bengal* [64 C. W. N. 561] it has been held that a suit on the matter specified in the section is maintainable notwithstanding the bar even after final publication of record-of-rights. This view has been affirmed in *J. N. Malik* v. *S. Palit* [69 C. W. N. 310]. It has been laid down that after final publication a suit is maintainable challenging correctness of entries in the record-of-rights finaly published.

**51D.** *Appointment of Special Judge.*— The State Government may appoint a person who is or has been a District Judge or an Additional District Judge to be a Special Judge for the purpose of sub-section (5) of section 51A.

**Notes**

This section has been added by W.B.L.R (Am.) Act 1965, W. B. Act XVIII of 1965. A person who is acting as a Dist. Judge or Addl. D. J. or who once held the office of a District Judge or Addl. D. J. can only be appointed for hearing appeal against any order passed in revision under section 51A(4) of the Act.

## CHAPTER VIII

### Management of estates vested in the State.

[*With effect from* 1. 11. 1965 *the provisions of this Chapter have been brought into force in all the districts of W. Bengal except in the areas transferred from Bihar to W. Bengal under the Transfer of Territories Act,* 1956 (*Act* 40 *of* 1056) *by notification no.* 14810-*L. Ref., d/-*25. 9. 65, *first published in Cal. Gazette, Ext-Ord., Pt. I, d/-*27. 9 65.]

**52.** *Management of estates.* —All lands and all interests therein belonging to the State shall, unless the State Government otherwise directs by any general or special order and subject to such rules as may be made by the State Government in this behalf, be managed by the Collector of the district in which the lands are situated :

Provided that the State Government may entrust the management of all lands belonging to it in any area to such authority as may be prescribed and such authority shall thereupon, manage the lands subject to the control of the State Government and in accordance with such rules as may be prescribed.

#### Notes

Compare sec. 13 of the W. B. Estates Acquisition Act, 1953 and rule 12 of the W. B. Estates Acquisition Rules, 1954.

The section lays down that the Collector is to manage the lands belonging to the State. For the definition of the word "*Collector*" see sec. 2(4) of this Act. The definition includes "*Collector of a district* which means chief officer in charge of revenue administration of the district [see sec. 3(8) Bengal General Clauses Act.]

This section preserves the right of the lands being managed by other authorities as well.

## CHAPTER IX

### Miscellaneous.

**53.** *Delegation of powers by the State Government.*— The State Government may by a notification in the *Official Gazette* delegate any of the powers under sub-section (2A) of section 4, section 6, section 22, section 39 and section 40 to be exercised by the prescribed authority subject to such reservation as may be specified in the notification.

**Notes**

This section empowers the State Government to delegate, with specified reservation, its powers under sub-sec. (2A) of section 4, secs. 6, 22, 39 and 40 to a prescribed authority. Those powers are—

(1) power to permit in writing to use the land in a given manner indicated in sub-section (2A) of section 4. This provision has been added by W. B. L. R. (Am.) Act, 1966. (W. B. Act XI of 1966) ;

(2) power to take over the excess land held by a *raiyat* beyond the prescribed limit on payment of compensation (sec. 6);

(3) power to allow or disallow a claim of a *raiyat* to have held his land free of rent or of which the rent was fixed in perpetuity before the commencement of this Act after due enquiry into the validity of such a claim (sec. 22) ;

(4) power to acquire holdings of *raiyats* in any area for consolidation into compact blocks (sec. 39) ; and

(5) power to re-distribute lands after consolidation (sec. 40).

**54.** *Appeals.*— Subject to any special provisions for appeal made in this Act or in any rules made under this Act, an appeal shall lie in the manner indicated below—

(*a*) to the Collector of the district, when the order is made by a Revenue Officer or revenue authority below the rank of a Collector of a district ;

(*b*) to the Commissioner of the Division, when the order is made by the Collector of a district within the Division ;

(*c*) to the officer holding for the time being the office of Member, Board of Revenue, when the order is made by the Commissioner of a Division :

Provided that where an order is confirmed on appeal no further appeal shall lie under this section.

**Notes**

This section specifies the Revenue Authorities before whom appeals against orders passed under this Act shall lie. But when an order is confirmed on appeal no further appeal shall lie. The opening words of the section "Subject to any special provisions for appeal made in this Act" refer to secs.9 and 19 where only the appellate jurisdiction over matters dealt with therein has been conferred upon Civil Courts.

**Remedy of a person aggrieved by order of the Board of Revenue :**

The last Appellate authority prescribed by this section is the Member, Board of Revenue who is to sit in appeal against an order passed by the Commissioner of a Division. Any person aggrieved by an order of the Board of Revenue, however, can file a review application to the Board itself. Section 6 of the Board of Revenue Act reads as follows : 6(1) *Any person considering himself aggrieved by any order of the Board of Revenue may apply to the Board for review of the same ; and if the Board considers there are sufficient reasons for so doing, it may review the order and pass such further order as it thinks fit.* (2) *Every application under sub-section* (1) *for a review of any order must be made within a period of three months from the date of the order.*

*Provided that the Board may, in its discretion in any case extend such period, if sufficient reasons be shown for so doing.*

**Scope of appellate functions :**

In connection with the appellate function of District Panchayet Officer under the provisions of W. B. Panchayet Act, *D. Basu, J.* in *Babar Ali* v. *State of West Bengal*

[71 C. W. N. 842] elaborately reviewed the scope of appellate powers of administrative authorities. His Lordship lays down, "So far as appellate functions are concerned the proposition that an appellate function is inherently quasi-judicial in nature rests on the high authority of *Lord Haldane's* observation in the case of *Local Govt. Board* v. *Arlidge* [(1915) A. C. 120 (132, 150)]—when the duty of deciding an appeal is imposed those whose duty it is to decide it must act judicially. They must deal with the question referred to them without bias and they must give to each of the parties the opportunity of adequately representing the case made.....That this principle applies even where the appellate function is vested not in a court but in an administrative authority is also well established on the authority of the cases such as *King* v. *Tribunal of Appeal* [(1920) 3 K.B. 334], *Rex* v. *Minister of Transport* [(1934) 1 K.B. 277] and the like."

His Lordship in *Babar Ali* v. *State of West Bengal* [71 C. W. N. 842] referred to the aforesaid observations of *Sinha, J. in Nagendra Nath* v. *Commr. of Hills Division* [A. I. R. 1958 S. C. 398].

**55.** *Limitation for appeals.*— Save as expressly provided in this Act or the rules made thereunder, the period of limitation for an appeal under section 54 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 :

(*b*) when the appeal lies to the Commissioner of a Division—sixty days :

(*c*) when the appeal lies to the officer holding for the time being the office of the Member, Board of Revenue—ninety days.

**Notes**

**Scope :**

Like the Bengal Tenancy Act (since repealed with effect from 1. 11. 65) prescribing period of limitation for appeals under that Act as is to be found in Part II of Schedule III thereof, this Act through the provisions of this section has prescribed period of limitation for appeals under the foregoing section.

**Application of the provisions of Limitation Act, 1963 :**

The scope of the Limitation Act, 1963, has been considerably enlarged so as to include generally all Court proceedings. The insertion of a definition of 'application' as including a 'petition', and the inclusion of 'petitioner' in the definition of 'applicant' in Section 2, and the applicability of section 5 to special laws unless otherwise excluded are indicative of such enlargement. The Act of 1908 governed suits, appeals and *certain* applications. The present Act applies to suits and other proceedings and for purposes connected therewith. The change in language is intended to cover all petitions, original and otherwise, and to provide periods of limitation for original petitions as well as to applications under special laws [U. N. Mitra on Limitation and Prescription, 8th Edn., P. 13].

That being so in respect of the proceedings under this enactment which is a special law all the provisions of the Limitation Act, 1963 would apply. Thus Art. 137 of Limitation Act, 1963 would apply to a proceeding under section 8 of this Act when no notice has been served. In *Hurdatrai* v. *Official Assignee* [52 C. W. N. 343 at 356] their Lordships refused to invoke Art. 181 Limitation Act, 1908 (the predecessor of Art. 137 Limitation Act, 1963) on the ground that the proceedings in arbitration are not ones where the provisions of C. P. C. are applicable. In view of the changed language in the preamble[1] that reasonings no longer apply, Art. 137 being a residuary article.

If this enactment, however, prescribes for any proceeding a period of limitation different from the period prescribed in the schedule, as provided in section 29(2) Limitation Act, 1963 (a) the provisions of section 3 Limitation Act shall apply as if such period were the period prescribed by the schedule; (b) for the purposes of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in sections 4 to 24 (inclusive) shall apply only so far as, and to which, they are not expressly excluded by any such special or local law.

[1] For the preambles of both the Limitation Acts see page 118

There are some decisions [*G. D. Bhatar* v. *State of W. Bengal*, A. I. R. 1957 Cal. 483 : 61 C. W. N. 660 ; *Sehat Ali* v. *Abdul Quire Khan*, A. I. R. 1956 All. 273 : I. L. R. (1956)2 All. 253 (F. B.)] which took the view that the two clauses of section 29(2) Limitation Act[2] connected by the conjunction "and" should be treated as independent of each other and while the condition *that the special or local law should have prescribed a period of limitation different from that prescribed in the first schedule* had to be fulfilled for the applicability of the first clause of section 29(2), it was not so necessary in respect of the second clause. That view has been superseded by the Supreme Court in *Vidyacharan Shukla* v. *Khub Chand* [A.I.R. 1964 S.C. 1099 : (1964)2 S. C. A. 505] which held that for the application of both limbs of section 29(2) Limitation Act the *sine qua non* "that the special or local law should have prescribed a period of limitation different from that prescribed in the first schedule" must exist. So if that primary condition remains non-existent, Section 29(2) has no application.

**56.** *Power to enter upon land, to make survey etc.*— A Revenue Officer, or any officer authorised by him subject to any rules made under this Act, may at any time enter upon any land but not a dwelling house with such officers or other persons as he considers necessary, and make a survey or take measurement thereof or do any other acts which he considers to be necessary for carrying out any of his duties under this Act.

## Notes

**Commencement :**

With effect from 1. 11. 65 this section has been brought into force in all the districts of West Bengal except in the areas transferred from Bihar to West Bengal under the Transfer of Territories Act, 1956 (Act 40 of 1956) by notification No. 14810 L. Ref. d/-25. 9. 65 published in Cal. Gazette Ext. Ord. Pt. I, d/27. 9. 64.

[2] For section 29(2) of the Limitation Acts see page 119.

**Scope :**

This section does not empower the Revenue Officer or any officer authorised by him to enter any dwelling house for the purpose of carrying out his duties outlined in this section by entry upon any land. Compare sec. 56 of the Estates Acquistion Act which in laying down like provisions makes no exception with regard to the dwelling house but imposes upon the officer concerned a duty to give previous notice before he enters on any land. As the homesteads of *raiyats* have not been brought within the mischief of the various penal provisions of this Act, there will be no or less occasion for interference of law under this Act so far as the homesteads of *raiyats* are concerned. Perhaps this is why the Act provides this restriction.

**57.** *Power to compel production of records and documents and to enforce attendance of witnesses.*— Subject to the provisions of this Act and any rules made under this Act, any officer in dealing with proceedings under this Act shall exercise the powers of a Civil Court under the Code of Civil Procedure, 1908 (Act V of 1908), for the purposes of enforcing the attendance of witnesses and the production of records or documents or in enforcing or executing orders including an order for restoration of possession as if such orders were decrees of a Civil Court and such officer shall record the substance of the evidence, if, any, taken by him.

**Notes**

**Commencement :**

This section has been brought into force in all the districts of W. Bengal except the district of Purulia and the police stations Chopra, Karandighi, Goalpokhar, Islampore under the Subdivision of Raiganj in the district of W. Dinajpore by notification No. 14990 L. Ref. d/-13. 8. 1957.

In the areas transferred from Bihar to W. Bengal under the Transfer of Territories Act, 1956 the section was brought into force with effect from 1. 7. 1967 by notification No. 10732 L. Ref. d/-24. 6. 1967.

**Scope :**

Sec. 57 of Estates Acquisition Act is parimateria with this section.

The Officers in dealing with proceedings under this Act are empowered to exercise the functions of a Civil Court under the Code of Civil Procedure, 1908, in the following matters, namely :—

(i) in enforcing the attendance of witnesses and production of records or documents ;

(ii) in enforcing, or exercising orders which may include an order for restoration of possession as Civil Court decrees.

If in the course of the exercise of such powers any evidence is taken by an officer a substance of such evidence should be recorded by him.

See secs. 31 and 36, Orders XVI, and XXI, Code of Civil Procedure 1908.

**Inherent power to adopt other Procedures :**

It may be found that all the provisions of Civil Procedure Code have not been extended to a proceeding under the Act. The section lays down that in the matter of enforcing the attendance of witnesses and production of the records and in the matter of enforcing certain class of orders the provisions of C.P.C. should be resorted to. The question may arise if the Court has inherent power in any particular case to adopt such procedure as may be necessary to enable it do justice. The answer has been replied in the affirmative [*Chhayomannessa Bibi* v. *Basirar Rahman,* I. L. R. 37 Cal. 399 at 404 ; *Panchanan Sinha Roy* v. *Dwarka Nath Roy,* 3 C. L. J. 29 ; *Hukum Chand Boid* v. *Kamalananda Singh,* I. L. R. 33 Cal. 927]

The Courts are not to act upon the principle that every procedure is to be taken as prohibited unless it is expressly provided for by the Code, but on the converse principle that every procedure is to be understood as permissible till it is shown prohibited by law [ *Narsing Das* v. *Mangal Dubey,* I.L.R. 5 All. 163]. This is of course subject to the qualification that in the exercise of the inherent power the Court must be careful to see that its decision is based on sound general principles and is not in conflict with them or the intention of the legislature [*A. C. Roy & Co.* v. *Taslim & another,* 71 C. W. N. 531 at 535].

**58.** *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) No suit or other legal proceeding shall lie against the State 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.

**Notes**

**Commencement :**

By Notification No. 8144 L. Ref. d/-4. 6. 1965 this section has been brought into force in all the districts of W. Bengal except these areas transferred from Bihar to Bengal under Transfer of Territories Act, 1956 with effect from 7. 6. 1965.

By Notification No. 10732 L. Ref. d/-24. 6. 1967 this section with effect from 1. 7. 1967 has been brought into force in the transferred territories as well.

This section can be compared with sec. 58 of West Bengal Estates Acquisition Act.

**Scope :**

A reference to Art. 300 Constitution of India shows that it is open to Parliament or a State legislature to enact a law giving a right of suit in favour of or against the Government in a case in which such a right did not exist or taking away or restricting a right of suit which existed previously. A number of Statutes expressly enact provisions to immunize Govt. from any liability thereunder. The modern tendency of the Government is to immunize itself through statutory formulae. Those enactments have been challenged in Courts of law without success. A formulae of every common occurrence in the present day statutes is : no suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done under the Act. This formulae however does not protect an Act which is ultravires the statute under which it is sought to be done.

***Repeal.***—[1] [Without prejudice to the provisions of clause (*p*) of section 2 of the West Bengal Estates Acquisition Act, 1953] the following Regulation and Acts are hereby repealed, namely :—

(1) The Bengal Alluvion and Diluvion Regulation, 1825 (Ben. Regn. XI of 1825).

(2) The Bengal Alluvion and Diluvion Act, 1847 (IX of 1847).

(3) The Bengal Alluvial Land Settlement Act, 1859 (XXXI of 1858).

(4) The Bengal Rent Act, 1859 (X of 1859).

(5) The Bengal Tenancy Act, 1885 (VIII of 1885).

(6) The Cooch Behar Tenancy Act, 1910 (Cooch Behar Act V of 1910).

(7) The West Bengal Bargadars Act, 1950 (West Ben. Act II of 1950).

Proviso [Omitted by W.B.L.R. (Am) Act, 1965 (W. B. Act XVII of 1965)].

**Notes**

The provisions of Chapter VI of the West Bengal Estates Acquisition Act, 1953 have been brought into force with effect from the 10th April 1956 by a notification under section 49 of that Act; see Department of Land and Land Revenue Notification No. 6804L. Ref., dated the 9th April, 1956, published in the Calcutta Gazette, *Extraordinary,* dated 9th April 1956, Pt. I, p. 743. The effect of enforcement of Chapter VI of the W. B. Estates Acquisition Act, 1953 by the above notification is that the under-*raiyats* have been raised to the status of *raiyats* and their rights and liabilities shall be regulated by this Act. The Bengal Tenancy Act, 1885 stands repealed *in toto* on the enforcement of sec. 59 so far as it relates to cl. (5) with effect from 1. 11. 65 (vide Notification No. 14810 L. Ref. d/-25. 9. 65).

West Bengal *Bargadars* Act, 1950 has been repealed with effect from the 31st March 1956, effect having been given to

[1]The words within square bracket added by W. B. L. R (Am.) Act 1965.

this section so far as it relates to cl. (7) : see Notification No. 6346 L. Ref. dated 30th March, 1956. In the territories transferred from Bihar to W. Bengal it stands repealed with effect from 1. 7. 67 ; see notification No. 10732 L. Ref. d/24. 6. 67.

With effect from 1. 11. 65 clauses (1) to (6) have been brought into force in all the districts of West Bengal except in the areas transferred from Bihar to West Bengal under the Transfer of Territories Act, 1956 (Vide Notification No. 14810-L. Ref. d/-25. 9. 65 first published in Cal. Gaz. Ext. Ord. Pt. I. dated 27. 9. 65)

**Repeal, Effect of :**

Where an Act expired or was repealed, it was formerly regarded , in the absence of provision to the contrary, as having never existed, except as to matters and transactions past and closed [Maxwell on Interpretation of Statutes, 11th Edn., P. 390]. See also *Digambar* v. *Tafizuddin* [37 C. W. N. 1033]. Now a repeal, unless the contrary intention appears does not affect previous operation of the repealed enactment, or anything duly done or suffered under it, and any investigation, legal proceedings, or remedy may be instituted, continued, or enforced, in respect of rights, liabilities and penalties under the repealed Act as if the repealing Act had not been passed [Maxwell, 11th Edn. Page 392]. This statement of law in Maxwell is based on sec. 38(2) of Interpretation Act of England which is in the same line with sec. 8 of Bengal General Clauses Act. The law in Bengal accordingly is the same. For repeal of a substantive right and procedural provisions see notes at Pp. 8-9.

**60.** *Power to make rules.*— (1) The State Government may, after previous publication, make rules for carrying out the purposes of this Act.

(2) The rules so made shall have effect as if they were incorporated in this Act.

**Notes**

This section authorises the State Government to make rules for carrying out the purposes of this Act. The rules made, from a part of this Act. The Act and the rules so made, taken together, present a complete law on the subject covered by the Act.

Uptil now the following Rules[1] have been framed by the Govt.

(a) The West Bengal Land Reforms (Bargadars) Rules 1956.

(b) The West Bengal Land Reforms (Prescribed Authority) Rules, 1964.

(c) The West Bengal Land Reforms (Transfer of Holding) Rules, 1965.

(d) The West Bengal Land Reforms Rules, 1965.

**Commencement :**

By notification No. 6346 L. Ref. d/-30. 3. 1956 this section was brought into force with effect from 31. 3. 1956. Then West Bengal did not include the territories subsequently transferred to West Bengal under Transfer of Territories Act, 1956 from Bihar to West Bengal. Sec. 43 of the said Act of 1956 maintained status quo in respect of the application of the Acts in the respective territories despite transfer of Territories to W. Bengal from Bihar and vice versa. So a fresh notification was necessary to bring into force sec. 60 and this was achieved by Notification No. 10732 L. Ref. d/-24. 6. 1967.

**Conflict between section and rule : what to prevail :**

The Section provides that the rules framed under the section should be regarded as part of the statute. In *Dales case* [L. R. 6 Q. B. D. 376 (1881)] *Brett, L. J. observed,* "I am of opinion that the rules and orders have statutory authority, for not only is the authority given to certain persons by statute to draw them up, but it is provided that they should be laid before the Parliament for a certain time, and if not objected to, be binding. Whenever that provision is introduced in any Act of Parliament, the rules and orders if not objected to by the Parliament become a part of the statute."

In *Protap* v. *Krishna Gupta,* [A. I. R. 1956 S. C. 140] *Bose, J.* observed, "The rules cannot travel beyond the Act and must be read subject to its provisions." His Lordship there considered the effect of rule made under C. P. and Berar

[1] *For the Rules as amended from time to time by various notifications see Appendix.*

Municipal Act by the State Govt., the section itself providing that the rules made by the State Govt. must be consistent with the Act.

In *Newspaper Ltd.* v. *State Industrial Tribunal* [A. I. R. 1957 S. C. 532 : 1957 S. C. A. 390] *Kapur, J.* considered the effect of rules made by the State Govt. under section 23 U. P. Industrial Disputes Act. It was laid down that the cardinal rule in regard to making rules is that they must be *legi fidei rationi consona* and therefore all regulations which are contrary or repugnant to statutes under which they are made are ineffective.

In *Central Bank of India* v. *Their Workmen* [A. I. R. 1960 S. C. 12 : 1960 S. C. A. 454 : 1960 S. C. R. 200] *S. K. Das, J.* while considering the effect of Rule 5 of the Banking Companies Rules which are statutory rules laid down that if a rule goes beyond what the section contemplates, the rule must yield to statute.

**Rule making power, a branch of delegated legislation :**

A trend visible at present in democratic countries like England, the U.S.A. and India is that relatively only a small part of the total U.S.A. and India is that relatively only a small part of the total legislative output of the Government is enacted directly by the legislature. Much more extensive is the bulk than the statutes are the rules etc., which are made by various administrative authorities under powers conferred by them by the legislature. In such a case the authority acts as delegate of the legislature within the framework of the powers conferred by them. This mechanism is called delegated legislation or sub-ordinate legislation. An outstanding document in England on this point is the Report of the Committee of the Ministers' Power, 1931. The mechanism of delegated legislation permits a certain amount of flexibility and elasticity in the area of legislation.

**Delegated legislation how far intravires :**

Under the Indian Constitution there is limit to the power of such delegation of legislative powers to the Executive. English decisions on the point would not be helpful because the keystone of British Constitution is the doctrine of sovereignity[1] or supre-

[1] Dicey on Law of the Constitution (1952) P 39.

macy[2] of the Parliament which mean that the Parliament can make or unmake any law whatsover[3].

The question how far the Indian Parliament or a state Legislature can delegate its powers to the Executive arose first in *Re. Delhi Laws Act* [1951 S. C. J. 527 : 1951 S. C. R. 747]. It however failed to define the permissible limit within which legislative bodies could delegate its legislative powers. In *Bagla* v. *State of M. P.* [A. I. R. 1954 S. C. 465] it was observed that essential powers of legislation cannot be delegated or in other words legislature cannot delegate its functions of laying down legislative policy in respect of a measure and its formulation as a rule of conduct. The question fell for decision in a series of cases [*Raj Narayan* v. *Chairman, Patna Administrative Committee,* A. I. R. 1954 S. C. 569; *Edward Mills Co.* v. *State of Ajmere,* A. I. R. 1955 S. C. 25 : 1955 S. C. J. 42 ; *Bhatnagar & Co.* v. *Union of India,* A. I. R. 1957 S. C. 478]. It is now settled that legislature cannot delegate to another agency the exercise of its judgments on the question as to what the law should be. On the other hand, if the Legislature lays down the policy in clear and unambiguous terms the delegation of the power to execute the policy by framing appropriate rules cannot be impugned as impermissible [*Vanarshi Das* v. *State of M. P.* A. I. R. 1958 S. C. 909 ; *Makhan Singh* v. *State of Punjab,* A.I.R. 1964 S. C. 381 at P. 401]. The legislative policy has to be ascertained from the provisions of the Act including the preamble [*Union of India* v. *Bhanmal,* A. I. R. 1960 S. C. 475 at P. 479 ; *Vasanlal* v. *State of Bombay,* 1961 S. C. J. 394 at 397 ;

[2] Jennings on the Laws and the Constitution, P. 139.

[3] Dicey on the Law of Constitution (1952) P 39-40. Prof Wade points out in the introduction to Dicey Constitution that the existence of organizations reflecting views of every trade, profession or business led to the practice of prior consultation before a measure is introduced in the Parliament. Government cannot afford to disregard organized public opinion. Thus the political supremacy of Parliament as a law making organ becomes more or less a fiction. Legislation is a compromise of conflicting interests. Parliament can no longer compel save in outward form (P. XLIV). Jennings observes in the Laws and the Constitution (P. 143) Parliament passes many laws which many people do not want. But it never passes any law which any substantial section of the population violently dislikes.

*State of M. P.* v. *Chamalal,* A. I. R. 1965 S. C. 124 at P. 128]. Where the Legislature has performed its essential duty by laying down the policy, it can not only delegate its functions making sub-ordinate or ancillary legislation but also can empower the delegates to redelegate the functions to sub-delegates who are specified in the Statute itself. Specification by class is sufficient for this purpose [*Hari Shankar* v. *State of M. P.*, A. I. R. 1954 S. C. 465 ; (1955) 1 S. C. R. 380 ; *Union of India* v. *Bhanmal,* A. I. R. 1960 S. C. 475 at P. 480].

A legislature may delegate the power to frame rules and to provide the penalty for violation of the rules. Instead of prescribing the precise penalty for violation of the rules, it may lay down the limit or the standard, leaving it to the administrative body to prescribe the penaly within such limits or in accordance with the standard laid down [*D. N. Ghosh* v. *Addl. Session Judge,* 63 C. W. N. 147].

## APPENDIX A

# THE WEST BENGAL LAND REFORMS (BARGADARS) RULES, 1956[1].

1. *Short title.*—These rules may be called the West Bengal Land Reforms (*Bargadars*) Rules, 1956.

2. *Definitions.*—In these rules—

(*a*) "the Act" means the West Bengal Land Reforms Act, 1955 ;

(*b*) "section" means a section of the Act.

3. *Period under section* 16(2) *within which the share of the produce shall be delivered.*—The period within which a *bargadar* shall, under sub-section (2) of section 16, deliver to the person whose land he cultivates the share of the produce due to him shall be seven days from the date of threshing the produce.

4. *Jurisdiction of officers or authorities.*—The officer or authority referred to in sub-section (1) or sub-section (2) of section 17 or sub-section (1) of section 18 or sub-section (2) of section 20 shall exercise jurisdiction over such areas as may be specified by the State Government.

5. *Authority to sell land under section* 17(2) ; *procedure and terms and conditions of the sale.*—(1) The prescribed authority referred to in sub-section (2) of section 17 shall be the officer or authority appointed by the State Government to decide disputes referred to in sub-section (1) of section 18.

(2) In deciding any matter referred to in sub-section (2) of section 17, the person owning the land in question and the *bargadars* concerned shall be given an opportunity of being heard.

(3) Before making any order for sale of the land, the prescribed authority referred to in sub-section (2) of section 17 shall determine the market price of the land and then make an offer to the *bargadar* evicted under clause (*d*) of sub-section (1)

[1] See Notification No. 9796 L. Ref., d/- 1st June, 1956, pub. in Calcutta Gazette, Extraordinary, d/- 2nd June, 1956, Pt. I, pp. 1355-1356(a).

of section 17 to take the land at such price. If the *bargadar* accepts the offer but is unable to pay the price at a time, provision shall be made in the order for sale allowing him to make the payment in equal annual instalments not exceeding ten with interest at three and one-eighth *per centum per annum* to be paid on such dates as may be specified in the order :

Provided that the first instalment shall be payable on a date not later than the 1st day of *Baisakh* next following the date of the order.

(4) On payment of the price at a time or the first instalment, as the case may be, the prescribed authority referred to in sub-section (2) of section 17 shall make a further order that the land has been transferred to the *bargadar* by sale and on such order being made the land shall vest in the *bargadar* with effect from the first day of Baisakh next following the date of the order.

(5) The amount ordered to be paid by instalments shall be a charge on the land in respect of which the order has been made.

(6) Where a *bargadar* is unwilling to take the land at the market price or for any other reason, the prescribed authority referred to in sub-section (2) of section 17 shall sell the land by public auction to the highest bidder amongst other persons after giving publicity of the sale by beat of drums as well as by affixing copies of the notice of sale in a conspicuous place on the land, and in the notice boards of the local Union Board and the subdivisional civil and criminal courts of the district concerned. On such sale being made, the land shall vest in the purchachaser with effect from the first day of Baisakh next following the date of the sale.

6. *Manner of making application by an owner or a bargadar and the procedure to be followed by the trying officer.*—

(1) A *bargadar* or a person whose land is cultivated by a *bargadar* may make an application for a decision in respect of the matters referred to in sub-section (1) of section 19 [1][*****]

[1] The words "to the officer or authority appointed under the said sub-section for the area in which the land is situated" *omitted by* Notification No. 7728 L. Ref., d/16. 4. 1959, published in the Cal. Gaz. Extra-ord., d/-17. 4. 1959.

[2][*****]. Every such application shall be signed and verified in the manner provided in sub-rules (2) and (3) of rule 15 of Order VI of Schedule I to the Code of Civil Procedure, 1908 and shall contain the following particulars :—

(*a*) the name and place of residence of the applicant ;

(*b*) the name and place of residence of the person whose land is cultivated by the *bargadar* if the *bargadar* is the applicant ;

(*c*) the name and place of residence of the *bargadar* if the person whose land is cultivated by the *bargadar* is the applicant ;

(*d*) the location and sufficient description for the purpose of identification of the land in regard to which the application is made ;

(*e*) The point or points in dispute and the claim of the applicant.

[3][A fee of annas twelve shall be paid in court-fee stamps along with an application under this sub-rule except an application in respect of the matter referred to in clause (*c*) of sub-section (1) of section 18 which may be made on plain paper without any court-fee.]

(2) The application shall be accompanied by as many true copies thereof as there are opposite parties for sending such copies to the opposite parties along with the notices to be served on them.

(3) Such application may be presented by the applicant or by his agent duly authorised by him in writing [4][to the officer or authority appointed under sub-section (1) of section 18 for the area in which the land is situated, or, where for any area two or more officers or authorities are appointed under the said sub-section, to such of those officers or authorities as may be specially appointed by the State Government for the purpose of receiving such application.] The applicant and the opposite

[2] The words "with a court-fee of annas twelve" were *omitted* by Notification No. 22322 L. Ref., dated 20th December, 1956, published in Calcutta Gazette, *Extraordinary*, dated 20th December, 1956, p. 2919.

[3] Inserted by "Notification No. 22322 L. Ref., d/-20. 12. 1956.

[4] Added by notification No. 7782 L. Ref. d/-16. 4. 59 published in Calcutta Gaz. Ext., d/-17. 4. 1959.

party may also be represented by agents so authorised before the officer or authority disposing of the application :

Proved that if the person representing a party is a legal practitioner as defined in section 3 of the Legal Practitioners Act, 1879 (Act XVIII of 1879), and holds a *vakalatnama* or a *mukhtarnama,* as the case may be, from the party in this behalf, no separate authorisation shall be necessary.

(3*a*) [*This sub-rule was added by Notification No.* 7782 *L. Ref, d/-*16. 4. 59 *but later omitted by Notification No.* 1046 *L. Ref. d/-*26. 6. 63.]

(4) [1][Any officer or authority proceeding to dispose of such application] shall fix a date for consideration of the application and after giving the parties concerned an opportunity of being heard shall dispose of the application.

(5) Every such application shall be disposed of within three weeks from the date of filing of the application :

[2][Provided that if such application is in respect of any matter referred to in clause (*a*)[2](1) [clause (*b*) or clause (c)] of sub-section (1) of section 18, the officer or authority shall make an enquiry from the [2](2) [Settlement Officer having jurisdiction over the area in which the land is situated] whether proceedings under section 5A of the West Bengal Estates Acquisition Act, 1953, are pending in respect of the land in respect of which the application is made. If any such proceedings are pending, the disposal of the application shall be stayed pending conclusion of the said proceedings].

[1] Substituted for the words "On receipt of the application the officer or authority" by notification No. 7782 L. Ref., d/-16.4.1959 published in Cal. Gaz. Extra. Ord., d/-17. 4. 1959.

[2] Added by notification No. 4974 L. Ref., d/-19. 3. 1958 published in Cal. Gaz., Extra. Ord., d/-21. 3. 1958.

[2](1) Substituted *for* "or clause (*b*)" by Notification No. 3468 L. Ref., d/-14. 2. 59, pub. in Cal. Gaz., *Extra-ord.,* d/-14. 2. 59, Pt. I. p. 285.

[2](2) Substituted *for* "Director of Land Records and Surveys" by Notification No. 18712 L. Ref., d/ 13. 9. 58, pub. in Cal. Gaz. *Extra-ord.,* d/-16. 10. 59, Pt. I. p. 3371.

[1][Provided further, that notwithstanding anything contained in the foregoing proviso where the officer or authority considers it expedient to dispose of the produce, such officer or authority shall divide the share of the produce in the manner laid down in sub-section (1) of section 16, allow the *bargadar* to take his share of the produce sell the owner's share thereof and, after deducting the expenses of the sale, deposit the balance of the sale-proceeds in the revenue deposit to the credit of the Subdivisional Officer of the subdivision in which the land is situated. After the conclusion of the proceedings the sale-proceeds deposited may be withdrawn by the owner.]

(6) In disposing of such application, the officer or authority shall only make a summary record of the essential facts disclosed in the hearing on which evidence has been taken and the order is based. The order shall contain a concise statement of the dispute, the points for determination and the decisions thereon together with the reasons for the decisions. The order shall specify the date or dates fixed by the officer or authority for division of the produce and also the date or dates for threshing of the produce, if any, fixed by the officer or authority.

[2]6A. *Superintendence and control.*—(1) The State Government may, by a notification in the official gazette, empower in each district or subdivision one or more officers to exercise superintendence and control over officers or authorities appointed under sub-section (1) of section 18, exercising jurisdiction in the district or the subdivisions, as the case may be, who shall, for the purposes of these rules, be subordinate to such officer or officers.

(2) The officer or officers empowered under sub-rule (1) shall have the power to withdraw, by general or special order, from the file of any officer or authority appointed under sub-section (1) of section 18 and subordinate to him or them, any proceeding or proceedings and transfer the same for proposal to any other subordinate officer or authority appointed under sub-section (1) of section 18.

[1] Added by Notification No. 3468 L. Ref., d/-14. 2. 1959 published in Cal. Gaz., Extra. Ord., d/-14. 2. 195 .

[2] Rule 6A added by Notification No. 10446 L. Ref. d/-26.6.63.

7. *Procedure for appeals.*—(1) Every appeal shall be filed in the form of a memorandum and shall be signed and verified by the appellant in the manner provided in sub-rules (2) and (3) of rule 15 of Order VI of Schedule I to the Code of Civil Procedure, 1908. It shall be accompanied by an authenticated copy of the order appealed against and shall contain the following particulars :—

(*a*) the name and address of the appellant ;

(*b*) the name and address of the respondent :

(*c*) the location of the land cultivated by the *bargadar* ; and

(*d*) the grounds of appeal.

(2) The court-fees payable on a Memorandum of Appeal under sub-section (1) of section 19 shall be such as are provided in [1][sub-clause (*ii*) or clause(*a*) of Article 11 of Schedule II to the Court-fees Act, 1870], and shall be collected in the manner laid down in that Act.

(3) On the filing of an appeal the appellate Officer shall call for the records of the case from the officer or authority against whose order the appeal has been filed and after giving the appellant and the respondent an opportunity of being heard shall dispose of the appeal.

(4) Every appeal shall be disposed of by the Appellate officer within one month from the date of filing of the appeal.

8. *Manner of service of notices and processes.*—All notices and processes under these rules shall be served either by registered post or in the manner provided for the service of a revenue or a civil process.

9. *Manner of execution of an order under section* 20 (2).—Any party may apply to the officer or authority referred to in sub-section (1) of section 18 or the Munsif referred to in sub-section (1) of section 19 for the execution of any order made by such officer or authority or by such Munsif. The officer or authority or the Munsif shall thereupon forward such application forthwith to the officer or authority referred to in sub-section (2)

[1] Substituted for Article 1 of Schedule I to the Court-fees Act., 1870.

of section 20 [1][who shall execute the order in the manner laid down in the Code of Civil Procedure] [2][after serving on the person against whom execution is applied for a notice to show cause, within seven days of the date of the service of the notice, why the order shall not be executed.]

10. *Manner of granting copies of records.*—The rules in the Bengal Records Manual shall be followed in the matter of granting copies of records :

Provided that in case of appeals filed before the Munsif under sub-section (1) of section 19, the procedure laid down in the Civil Rules and Orders in respect of such matters shall be followed.

11. *Process-fees*—When an application to the officer or authority referred to in sub-section (1) of section 18 or a Memorandum of Appeal to a Munsif referred to in sub-section (1) of section 19 is filed, a process-fee of annas twelve per party on whom a notice is to be served shall be paid in court-fee stamps along with the application or the Memorandum of Appeal, as the case may be.

[3]12. *Maintenance and preservation of registers and classification and preservation of records of appeals under section* 19(1).—(1) Appeals filed before the Munsif under sub-section (1) of section 19 shall be entered in a register in Form A appended to these rules.

(2) The records of appeals referred to in sub-rule (1) shall consist of two files to be styled and marked, respectively, File B and File C of which—

(*i*) File B shall contain

(*a*) table of contents, (*b*) order sheets, (*c*) memorandum of appeal together with any schedule annexed thereto, (*d*) counter petition, if any, (*e*) memorandum of the points for decision, (*f*) decision upon which preliminary order, if any, is

[1] Substituted for "who shall execute the order in the manner he thinks fit" by Notification No. 17596, L. Ref., d/-11. 9. 1957 published in Cal. Gaz., Extra., d/-11. 9. 1957, Pp. 3635-3636.

[2] The words within square bracket added by Notification No. 2800 L. Ref., d/-22. 2. 1965 Published in Cal. Gaz. Ext. Ord. Pt. I d/-22. 2. 1965.

[3] Added by Notification No. 196 L. Ref., d/-7. 1. 1964 ; *vide* Cal. Gaz., Extraordinary, d/-8. 1. 1964, Pt. I, Pp. 49-50.

founded and such order with further directions, if any, given, (*g*) final order, (*h*) evidence, oral and documentary, as may be admitted in appeal, (*i*) lists of documents admitted in evidence, and

(*ii*) File C shall contain all other papers.

(3) All records of appeals other than those dismissed for default or non-prosecution shall be sent to the Record Room of the Collector of the district by the Munsif of a Sadar subdivision and to Record Room of the Subdivisional Officer by the Munsif of an outlaying subdivision, within the third month next succeeding the month in which the appeals were decided or disposed of. In case where there is no Record Room in the outlying subdivision, the records of such appeals shall be sent to the Record Room of the Collector of the district within the period specified above. The original and appellate records shall be kept together in the Record Room of the Collector or the Subdivisional Officer, as the case may be. The records of the appeals dismissed for default or non-prosecution shall be kept in the office of the Munsif and shall be destroyed after a period of one year from the date of dismissal. The registers of appeals in Form A shall similarly be sent to the Record Room of the Collector or of the Subdivisional Officer, as the case may be, after all appeals entered therein have been decided or disposed of.

(4) The registers of appeals, and the records of appeals other than those dismissed for default or non-prosecution, shall be preserved for the following period, namely :—

| | *Files* | *Period of preservation.* |
|---|---|---|
| (*i*) Records .. | File B .. | 12 years |
| | File C .. | 3 years |
| (*ii*) Registers .. | .. .. | 12 years |

[1]FORM A [Rule 12 (1)]

*Register of Bhagchas Appeals.*

Year.....

Court of the Munsif at....etc. etc.

[1] Added by *ibid.* For full particulars of the Forms, see *ibid.*

## APPENDIX B

# THE WEST BENGAL LAND REFORMS (PRESCRIBED AUTHORITY) RULES, 1964.[1]

1. *Short Title.*—These rules may be called the West Bengal Land Reforms (Prescribed Authority) Rules, 1946.

2. *Definitions.*—In these rules—

(*a*) "the Act" means the West Bengal Land Reforms Act, 1955 ;

(*b*) "section" means a section of the Act.

3. *Prescribed Authority.*—The prescribed authority referred to in section 53 shall be the following officers, namely :—

(*i*) the Collector, and

(*ii*) the Additional District Magistrate of a district.

[1] Published in Cal. Gazette, Ext. ord, Part I dated 29.2.1964 (Notification No. 3504 L. Ref., d/-17.2.1964).

## APPENDIX C

# THE WEST BENGAL LAND REFORMS (TRANSFER OF HOLDING) RULES, 1965.[1]

1. *Short title.*—These rules may be called the West Bengal Land Reforms (Transfer of Holding) Rules, 1965.

2. *Definition.*—In the rules, "section" means a section of the West Bengal Land Reforms Act, 1955 (West Bengal Act X of 1956).

3. *Notice of transfer under section* 5.—(1) Notices under section 5 shall be as nearly as may be, in the Form appended to these rules.

(2) When several holdings are included in one document of transfer, all such holdings may be included in one notice.

4. *Process Fees.*—The process fees required for service of notice under section 5 shall be levied in court-fee stamps at the rate of one rupee per party on whom the notice is to be served.

5. *Prescribed Authority.*—The Collector shall be the prescribed authority for purposes of clause (*b*) of sub-section (1) and of sub-section (2) of section 5.

## FORM

(see rule 3)

*Notice of transfer for service on the prescribed authority and co-sharer raiyats under section* 5.

To

The Prescribed Authority/Co-sharer raiyat.

Take notice of the transfer of the holding (or the portion or share thereof) specified in the schedule below.

The transfer for Rs.....has been registered at the Sub-Registry Office on.....

The sale of the holding or the portion or share thereof (or decree or order absolute for the foreclosure of the mortgage

[1] Published in Calcutta Gazette, Ext. ord., Part I dated 11.6.1965 (Notification No. 8338 L. Ref. dated 9.6.1965).

thereof) for Rs.....has been confirmed in the court of..... at.....on..... in execution/certificate case No.....of.....

Sub-Registrar/Revenue Officer/Judge.

N.B.—The Sub-Registrar, Revenue Officer or Judge shall strike out the paragraphs which are inapplicable.

(Names and postal addresses of all Co-sharer raiyats)

| Item no. in the schedule | Name of the Co-sharer raiyats | Postal address |
|---|---|---|

Schedule

Column 1. Name, father's/husband's name and residence of transferor or judgment-debtor.

Column 2. Name, father's/husband's name and residence of the transferee or the decree-holder.

Column 3. Name, father's/husband's name and residence of the purchaser in case of sale.

Column 4. Nature of transfer.

Column 5. Item No. in the document of sale or foreclosure.

Column 6. Village and police-station in which the land is situated.

Column 7. Khatian No. and plot No. of the holding transferred with area (when the whole of the holding is not transferred, the extent of interest transferred and the particulars of the plots with area to be given).

Column 8. Annual revenue of the holding.

Column 9. Proportionate revenue in case of transfer of a portion or share of the holding.

Column 10. Consideration money or value as set forth in the document of transfer or sale price in case of sale in execution of decree or certificate or market value determined by court in case of foreclosure of mortgage.

Column 11. Remarks

# THE WEST BENGAL LAND REFORMS RULES, 1965.[1]

1. *Short title* :—These rules may be called the West Bengal Land Reforms Rules, 1965.

2. *Definitions* :—In these rules,—

(a) "the Act" means the West Bengal Land Reforms Act, 1955 (West Ben. Act X of 1956);

(*b*) "Form" means a Form appended to these rules ;

(*c*) "Anchal Panchayat" means a Anchal Panchayat constituted under the West Bengal Panchayat Act, 1957 (West Bengal. Act I of 1957) ; and

(*d*) "section" means a section of the Act.

3. *Appointment of prescribed Authority* :—The State Government may, by notification in the *Official Gazette,* appoint any officer or authority to be the prescribed authority for the purposes of all or any of the following provisions of the Act, namely :—

(*a*) sub-section (2B) and (4) of section 4,

(*b*) sub-section (5) of section 9, and

(*c*) sub-section (2), (3) and (4) of section 14,

and one or more officers or authorities may be appointed to be the prescribed authority for all or any of the aforesaid purposes.

[2][3A. *Terms and conditions for quarrying sand, etc., under sub-section* (2A) *of section* 4.—(1) A raiyat intending to—

(*a*) quarry sand, or permit any person to quarry sand, from his holding, or

(*b*) dig or use or permit any person to dig or use, earth or clay his holding for the manufacture of bricks, tiles, for any purpose, other than his own use, shall make an application

[1] See Government of West Bengal, Land and Land Revenue Department, Notification No. 15918 L. Ref., d/-15. 9. 66 published in Calcutta Gazette, *Extraordinary,* d/-12.10.1966, *pp.* 3274*a*-3274*t*.

[2]Inserted by Land and Land Revenue Dept. Notn. No. 6886 L. Ref. d/-18.4.67, published in Cal. Gazette, Extraordinary, d/-25.4.67, pp. 1309-14.

in Form a 1 for a permit for such quarrying or digging or use to the Additional District Magistrate through the Junior Land Reforms Officer of the area. A copy of the application shall be sent at the same time to the Subdivisional Land Reforms Officer and to the additional District Magistrate.

(2) Where such quarrying of sand or digging or use of earth or clay is intended to be done by any person other than the raiyat, the particulars of such person shall be mentioned in such application.

(3) Where an application is made for a permit for quarrying of sand such application must be accompanied by a certificate from the local Executive Engineer of the Public Works Department, Government of West Bengal, indicating the depth of sand seam and its thickness.

(4) For the purpose of obtaining the certificate referred to in sub-rule (3), an application shall be made to such Executive Engineer, stating therein the particulars of the land (police-station, mauza, khatian No., Plot No. and area) and enclosing therewith a duly receipted Treasury Challan showing payment of a fee of five hundred rupees for the inspection and investigation to be made by the Executive Engineer.

3.B. *Verification of the application and grant of permit.*—

(1) On receipt of the application the Junior Land Reforms Officer shall ascertain if the applicant has a permanent and transferable interest in the land and whether all persons having such interest in the land have joined in the application and shall also make an enquiry, in consultation with Agricultural Extension Officer of the area, if necessary, as to—

(*a*) whether the land is double cropped or fit for double cropping or situated within the command area of any irrigational project ;

(*b*) whether the land is situated within forty-five metres from any public road, railway track, an irrigation or drainage canal or an irrigation or drainage embankment ;

(*c*) the distance of the land from any public road, railway track or any irrigation embankment ;

and shall prepare a report.

(2) The application with the report of the Junior Land Reforms Officer shall be sent to the Additional District Magis-

trate through the Subdivisional Land Reforms Officer. The Subdivisional Land Reforms Officer shall forward the application along with the report of the Junior Land Reforms Officer with his own views after such further inquiries or local inspection which he may consider necessary to make.

(3) The Additional District Magistrate may, if he is satisfied after consideration of the report of the Junior Land Reforms Officer and the Subdivisional Land Reforms Officer that a permit may be granted for quarrying, digging or use, issue a permit in favour of the applicant in Form—bl :

Provided that no such permit shall be granted unless the fee mentioned in sub-rule (5) is paid :

Provided further that no such permit shall be granted if—

(*a*) the land is double cropped or fit for double cropping ;

(*b*) the land is situated within the command area of any irrigational project ;

(*c*) in the case of sand quarrying, the thickness of sand seam is less than 6 metres ;

(*d*) the land is situated within 45 metres from any public road, railway track or any irrigation or drainage canal or any irrigation or drainage embankment, such distance being measured horizontally from the outer toe of the bank or the outer edge of the cutting, as the case may be.

(4) Such permit shall be granted for not more than one year and shall be subject to the following conditions, namely :—

(*a*) the raiyat shall not himself, or permit any person to, quarry sand or dig or use any earth or clay from his land except under a lease granted under the Mines and Minerals (Regulation and Development) Act, 1957 (Act No. 67 of 1957 ;

(*b*) the raiyat shall pay revenue and cess regularly ;

(*c*) the raiyat shall not transfer the permit to any person ;

(*d*) the raiyat shall allow the Additional District Magistrate, the Subdivisional Officer, the Subdivisional Land Reforms Officer, the Junior Land Reforms Officer or any other officer authorised by the Additional District Magistrate in this behalf, to enter upon the land for inspection :

(*e*) for actual operation of quarrying or digging or using 3 metres clear margin for every 2.5 metres depth shall be kept from the outer boundary of the adjacent plot or plots and main-

tained throughout the operation or the sides of the quarry shall be terraced so as to form benches in a manner where the height of any bench shall not be more than the width of the bench and a clear margin of 3 metres shall be kept and maintained from the outer boundary of the adjacent land ;

(*f*) the permit may be cancelled at any time for any breach of the conditions ;

(*g*) the raiyat shall be wholly responsible for any breach of the conditions by the persons to whom permission may be given by him for carrying out the operation.

(5) A fee shall be payable in advance at the time of issue of the permit on the basis of the area of operation at the rate of seventy-five rupees per hectare subject to a minimum of ten rupees.

4. *Manner of giving opportunity to the raiyat to show cause against action proposed to be taken under sub-section* (2*B*) *of section* 4 :—If any raiyat commits a breach of any of the provisions of sub-section (2A) of section 4, the prescribed authority shall serve a notice on the raiyat in Form No. 1 or in a form substantially similar thereto calling upon him to appear before it and file a written statement within the date specified in the notice showing cause why action and sub-section (2B) of the said section shall not be taken against him. On receipt of the written statement, if any, submitted by the raiyat the prescribed authority shall, after hearing the raiyat or his duly authorised representative and after making such further enquiry as it may think necessary, dispose of the case.

5. *Manner of sale of the holding of a raiyat by the prescribed authority under sub-section* (4) *of section* 4 :—When an order is made by the prescribed authority for the sale of holding under sub-section (4) of section 4, a notice of the rule shall be published by beat of drums on the holding at least fifteen days before the date fixed for sale, and copies of the notice shall be affixed on a conspicuous part of the holding and on the notice board in the office of the local *Anchal Panchayat* and in the civil and criminal courts of the subdivision in which the holding is situated. On the date fixed for sale the prescribed authority shall sell the holding by public auction to the highest bidder, subject to the provisions of secion 8.

6. *Taking possession of excess land under section* 6 :— Whenever it appears to the State Government that a raiyat is in possession of agricultural land in excess of 25 acres, it shall issue a notice calling upon the raiyat to show cause on the date fixed why the excess land shall not be taken over by it. While showing cause, the raiyat shall submit a statement in Form No. 2 or in a form substantially similar thereto indicating his choice of the land to be retained by him. If after considering the cause shown, if any, the State Government is satisfied that the raiyat is in possession of agricultural land in excess of the ceiling, it shall direct the raiyat by an order in Form No. 3 to deliver possession of the excess land to the person authorised by it in this behalf on the date specified in the order. Compensation as laid down in sub-section (2) of section 6 shall be paid to the raiyat for the excess land of which possession is taken by the State Government.

7. *Notice under sub-section* (1) *of section* 9 *of application for transfer by co-sharer or contiguous tenant* :—Notice under sub-section (1) of section 9 of application for transfer shall be in Form No. 4.

8. *Procedure for appeals and fees to be paid under sub-section* (6) *of section* 9 :—(1) Every appeal under sub-section (6) of section 9 shall be filed in the form of a memorandum and shall be signed and verified by the appellant in the manner provided in sub-rules (2) and (3) of rule 15 of order VI of Schedule I to the Code of Civil Procedure, 1908. It shall be accompanied by an authenticated copy of the order appealed against and shall contain the following particulars, namely :—

(*a*) the name and address of the appellant ;

(*b*) the name and address of the respondent ;

(*c*) the location and particulars of the holding in respect of which orders were passed by the Revenue Officer ; and

(*d*) the grounds of appeal.

(2) The Court-fees payable on the memorandum of appeal shall be such as are provided in sub-clause (*ii*) of clause (*a*) of Article 11 of Schedule II to the Court-fees Act, 1870 and shall be collected in the same manner as laid down in that Act.

(3) On the filing of an appeal, the Appellate Officer shall call for the records of the case from the officer or authority

against whose order the appeal has been filed and after giving the appellant and the respondent an opportunity of being heard shall dispose of the appeal.

(4) A process fee of rupee one per party on whom a notice is to be served shall be paid along with the memorandum of appeal.

9. *Form of application under sub-section* (1) *of section* 11 :—The application referred to in sub-section (1) of section 11 shall be in Form No. 5.

10. *Notice under sub-section* (2) *of section* 14 :—Notice to be served on the prescribed authority under sub-section (2) of section 14 shall be in Form No. 6.

11. *Process fee for transmission of the instrument of partition to the prescribed authority under sub-section* (2) *of section* 14 :—The process fee payable for transmission of the registered deed of partition to the prescribed authority under sub-section (2) of section 14 shall be rupee one.

12. *Form of application for redemption of usufructuary mortgage under sub-section* (4) *of section* 14C :—An application under sub-section (4) of section 14C for redemption of a usufructuary mortgage shall be in Form No. 7.

13. *Manner of enquiry on applications made under sub-section* (4) *of section* 14C :—In making enquiries on applications made under sub-section (4) of section 14C for redemption of a usufructuary mortgage the Revenue Officer shall follow, as nearly as may be, the procedure laid down in the Code of Civil Procedure ,1908, for the trial of suits, recording a memorandum of the substance only of the evidence as in cases in which no appeal lies and the reasons, in brief, for his findings.

14. *Manner of execution of final order under sub-section* (5) *of section* 14C :—A Revenue Officer shall, in executing a final order under sub-section (5) of section 14C follow, as far as possible, the procedure laid down in the Code of Civil Procedure, 1908, relating to execution of decrees.

15. *Manner of determination of revenue under sub-section* (2) *of section* 23 :—In determining the revenue payable by a *raiyat* in respect of lands comprised in his holding for which no rent was payable immediately before the date on which the provisions of Chapter IV of the Act came into force, the Revenue

Officer shall, in the first instance, ascertain the rates at which rent was being paid immediately before such date for lands of similar description with similar advantages in the vicinity. After such rates of rent have been ascertained, the Revenue Officer shall determine the revenue payable for the lands comprised in the holding on the basis of the average of such rates. Before determining the revenue in the manner aforesaid the Revenue Officer shall give to the *raiyat* an opportunity of being heard and shall consider any representation that may be made by him with respect to the rate at which the revenue is assessed or the amount assessed.

16. *Manner of alteration of revenue under section* 33 :— When the holding of a *raiyat* has increased due to amalgamation, purchase or any other cause, the revenue payable for the holding shall be increased by the amount of revenue payable for the land added to the holding. When the holding of the *raiyat* has decreased due to partition, subdivision, acquisition or any other cause, the revenue of the holding shall be decreased by an amount which bears the same proportion to the entire revenue demand of the holding as the decreased area bears to the land comprised in the entire holding.

17. *Manner, time and place of payment of instalments of revenue under section* 35 :—(1) Subject to any agreement to the contrary, the revenue payable by a *raiyat* shall be paid in four equal instalments each falling due on the last day of each quarter of the agricultural year in respect of which it is paid.

(2)(*i*) Every raiyat shall pay or tender each instalment of revenue before sunset of the day on which it falls due.

(*ii*) The payment or tender of revenue may be made—

(*a*) to the collecting staff, such as the tahsilder of the area in which the land for which revenue is payable is situated, or

(*b*) by postal money order.

(*iii*) When revenue is sent by postal money order, it may be sent to the collecting staff of the area or to the Collector or the Subdivisional Officer according as the land for which revenue is payable is situated in the Sadar or outlying subdivision of the district.

(*iv*) When revenue sent by postal money order is accepted by the collecting staff of the area or by any of the other officers mentioned in clause (*iii*), the fact of such acceptance shall not be used in any way as evidence that he has admitted to correct any of the particulars set forth in the coupon of the postal money order.

(*v*) When a raiyat makes any payment on account of revenue he may declare the year or years or the instalment or instalments in respect of which he wishes the payment to be credited and the payment shall be credited accordingly.

(*vi*) If the raiyat does not make any such declaration the payment may be credited against such year or years or instalment or instalments as the tahsildar or the officer receiving the payment thinks fit.

18. *Form of receipt for revenue* :—The receipt for the amount of revenue paid by a *raiyat* shall be in Form No. 8 and shall contain the particulars specified therein. For every receipt there shall be prepared a counterfoil containing the same particulars and this counterfoil shall be retained by the *tahsildar* or any of the other officers receiving the payment.

19. *Period of payment of revenue entitling a raiyat to rebate* :—A raiyat making payment of an instalment of revenue on or before the date on which it falls due shall be entitled to the rebate referred to in sub-section (1) of section 37.

20. *Procedure for recovery of arrears of revenue under section* 38 :—Any instalment of revenue if not paid by the date fixed for the payment of such instalment shall be treated as an arrear of revenue. No proceeding for recovery of such arrear shall however, be commenced before the close of the agricultural year to which it relates. If such arrear remains unpaid at the close of such agricultural year, a notice of demand shall be served on the raiyat asking him to make payment of the arrear within the date specified in the notice with interest at the rate of 6¼ per cent. per annum from the date or dates on which the revenue became due. If after receipt of the notice of demand a raiyat does not pay the arrears of revenue with such interest within the specified date, a certificate may be filed for recovery of the amount under the Bengal Public Demands Recovery Act, 1913.

(2) Where a *raiyat* makes an application under the second proviso to section 38 for payment of arrears of revenue by instalments he shall be allowed to pay the same in such number of monthly instalments not exceeding six as the Certificate Officer may fix.

(3) (*i*) A purchaser of a holding sold in execution of a certificate under the Bengal Public Demands Recovery Act, 1913, may, within one year from the date of confirmation of the sale or the date on which he first has notice of the incumbrance, whichever is later, present to Certificate Officer who made the order for sale of the holding or his successor-in office an application in writing, requesting him to serve on the incumbrancer a notice declaring that the incumbrance is annulled.

(*ii*) Every such application shall be accompanied by a fee of Re. 1 for service of notice.

(*iii*) When an application for service of notice is made, the Certificate Officer shall cause the notice to be served in compliance therewith, and the incumbrance shall be deemed to be annulled from the date on which it is so served.

[1]20A. *Terms and manner of settlement of lands at the disposal of State Government under sec.* 49.—(1) Settlements of lands which are at the disposal of the State Government may be made by the Collector of the district or the Additional District Magistrate of the district in which the lands are situated.

(2) Such settlement shall be made on a permanent basis, and the person with whom the land is settled shall have all the rights and obligations of a raiyat, as prescribed in the Act and the Rules framed thereunder.

(3) The area of land to be settled with any person shall be subject to the following minimum and maximum limits, namely:

(a) minimum—one third of an acre (0.1349 hectare) and

(b) maximum—such area as, together with the land already held by the person as a raiyat and half the area cultivated by him as bargadar, does not exceed two acres (0.8094 hectare) : provided that the Collector or the Additional District Magistrate, at his discretion relax the maximum or the minimum in the following circumstances, namely :

[1] This Rule 20A has been added by Notification No. 8416 L Ref. d/-1. 7. 1968 published in Cal. Gaz. Extra-Ord. d/-6.7.1968.

(i) where relaxation of the minimum or the maximum limit is necessary to avoid splitting up of fragmentation of a small plot of land,

(ii) where, in the opinion of the Collector or the Addl. District Magistrate the land settled is distinctly inferior in productivity to the average land in the same mouza,

(iii) where land available at the disposal of the State Government in a locality is not sufficient for settlement with all the persons who are residents of the locality and who intend to bring the land under personal cultivation and own no land or less than two acres of land ;

(iv) where the land at the disposal of the State Govt. in a locality is more than sufficient for settlement with all the persons who are residents of the locality and who intend to bring the land under personal cultivation and own no land or less than two acres,

Provided further that the area of land settled for the purpose of homestead with a person having no homestead of his own shall not in any case exceed 5 cottahs (.0335 hectare). hectare).

(4) deed of settlement shall be as far as possible in form No. 8A or its equivalent in the Bengali or in the Nepali language and shall be executed by the Collector, Additional District Magistrate, Sub-divisional Magistrate, Sub-divisional officer or the Sub-divisional Land Reforms Officer.

21. *Manner of maintenance of record-of-rights* :—Whenever a change is required to be made in the record-of-rights on account of any of the causes mentioned in clauses (*a*) to (*f*) of section 50, the matter shall be brought to the notice of the Revenue Officer especially empowered by the State Government for maintaining up to date village record-of-rights and all papers containing the original orders passed in mutation and other cases or authenticated copies of such orders shall be made available to him. On receipt of the original orders or authenticated copies thereof the Revenue Officer shall make necessary corrections in the records-of-rights and shall subscribe his dated signature to such corrections noting the authority under which the corrections have been made. After the corrections have been made, the Revenue Officer shall inform the parties concerned

and, if necessary, the Settlement Department of the changes made in the record-of-rights.

22. *Procedure for revising or preparing record-of-rights under Chapter VII* :—When an order has been made under section 51 directing that a record-of-rights be revised or prepared in respect of a district or part of a district, the record-of-rights of such district or part thereof shall be revised or prepared in the manner laid down in Schedule A appended to these rules.

23. *Particulars to be recorded* :—When an order is made under section 51 for the revision or preparation of a record-of-rights the particulars to be recorded by the Revenue Officer in the record-of-rights may include, either without or in addition to other particulars, any or all of the following, namely :—

(*a*) the name of each person who is a raiyat or occupant of land or who is a bargadar as described in the West Bengal Land Reforms Act, 1955 ;

(*b*) the situation, class and quantity of the land held by each raiyat, occupant or bargadar ;

(*c*) the name of each raiyat's or occupant's landlord :

(*d*) the revenue and cesses payable at the time the record-of-rights is being revised or prepared ;

(*e*) the rights and obligations of each raiyat in respect of—

(*i*) the use by him of water for agricultural purposes, whether obtained from a river, *jhil,* tank or well, or any other source of supply, and

(*ii*) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by him, whether or not such appliances be situated within the boundaries of such land ;

(*f*) the special conditions and incidents, if any, of the tenancy ;

(*g*) any right of way or other easement attaching to the land for which a record-of-rights is being revised or prepared ;

(*h*) if the land is claimed to be held revenue free—whether or not revenue is actually paid, and, if not paid, whether or not the occupant is entitled to hold the land without payment of revenue and if so entitled, under what authority :

Provided that if lands are not used for purposes connected with agriculture or horticulture, it shall be sufficient to record

that fact together with the prescribed particulars relating to the occupant and the tenancy.

24. *Publication of the draft record* :—(*i*) After the record-of-rights has been revised or prepared as aforesaid the Revenue Officer shall publish the draft of the record-of-rights as revised or prepared by placing it for public inspection, free of charge, during a period of one month, at such convenient place as he may determine. A public notice shall previously be published in each village, informing the *raiyats* of the place at which the draft record-of-rights of that village will be open to public inspection, the period during which it will be open to such inspection and the last date within which objections may be filed.

(*ii*) Objections to the draft record-of-rights shall be filed and disposed of in the following manner :—

Blank form of objection in Form No. 9 shall be available free of charge from the Settlement Office and objections shall, as far as practicable, be made in such form. Along with the original objection, the objector shall file a copy or copies of the same with a copy or copies of notices for service on persons who are materially interested in the case and the Revenue officer shall issue notice informing the objector and all such persons so interested of the date and the place fixed for the hearing of the objection. No objection shall be disposed of without affording the parties materially interested or their representatives an opportunity of being heard :

Provided that in any case in which an order is made *ex parte* against a person, he may, within thirty days from the date of the order, apply to the Revenue Officer for an order to set it aside and if he satisfies the Revenue officer that the notice of the objection was not duly served on him, or that he was prevented by any sufficient cause from appearing when the case was called on for hearing, the Revenue Officer shall make an order setting aside the *ex parte* order as against such person and shall fix another date for proceeding with the case :

Provided further that where the *ex parte* order is of such a nature that it cannot be set aside as against such person only, it may be set aside as against all or any of the other persons also involved in the case.

25. *Procedure for final publication of record-of-rights* :—After the objections, if any, preferred under rule 24 have been

considered and disposed of by the Revenue Officer, he shall finally prepare the record-of-rights and cause such record to be finally published by placing it for public inspection, free of charge, during a period of not less than one month at such convenient place as he may determine and cause a public notice to be given to that effect in each village to which the record-of-rights relate stating the place where it will be open to such inspection.

26. *Appeal under sub-section* (5) *of section* 51A :—(*i*) Every appeal under sub-section (5) of section 51A shall be filed in the form of a memorandum and shall be signed and verified by the appellant in the manner provided in sub-rules (2) and (3) of rule 15 of Order VI of Schedule I to the Code of Civil Procedure, 1908, and shall be accompanied by an authenicated copy of the order appealed against.

(*ii*) Every appeal shall be filed before the Special Judge appointed under section 51D within one month from the date of the passing of the order appealed against :

Provided that an appeal may be admitted after the said period if the appellant satisfies the Special Judge that he had sufficient reasons for not preferring the appeal within the said period.

(*iii*) The court fees payable on a memorandum of appeal under sub-section (5) of section 51A shall be such as provided in Article 11 of Schedule II to the Court Fees Act, 1870, and shall be collected in the manner laid down in that Act.

27. *Powers of officers appointed for revision or preparation of record-of-rights under Chapter VII* :—All officers appointed for revision or preparation of record-of-rights under section 51 shall be vested with the powers as provided in Schedule B appended to these rules.

28. *Management of estates* :—(1) All lands and all interests therein belonging to the State shall be managed according to the rules for the time being in force for management of Government estates subject to such directions as may, by general or special order, be issued from time to time by the State Government in this behalf.

(2) The authority referred to in the proviso to section 52 shall be such officer or authority as may be appointed by the State Government by notification in the *official Gazette* for the purposes of the said proviso.

(3) When the management of all lands belonging to the State Government in any area is entrusted to the officer or authority appointed under sub-rule (2), such authority shall manage the lands in accordance with the rules in force for the management of Government estates as far as applicable subject to such directions as may be issued by the State Government from time to time in this behalf.

29. *Procedure for appeals* :—(1) Every appeal under the Act the procedure for which has not been prescribed elsewhere in these rules shall be filed in the form of a memorandum and shall be signed and verified by the appellant in the manner provided in sub-rules (2) and (3) of rule 15 of Order VI of Schedule I to the Code of Civil Procedure, 1908. It shall be accompanied by an authenticated copy of the order appealed against.

(2) The Court-fees payable on a memorandum of Appeal shall be such as provided in Article 11 of Schedule II to the Court Fees Act, 1870, and shall be collected in the manner as laid down in that Act.

(3) A process-fee of rupee one for each party on whom notice is to be served shall be paid by the appellant.

30. *Manner of Service of notice* :—All notices required to be served under the Act of these rules the mode of service of which is not provided for in the Act or elsewhere in these rules, shall be served by registered post with acknowledgement due or in manner provided for the service of a process of a Revenue or a Civil Court.

31. *Manner of granting copies of records* :—The rules in the Bengal Records Manual shall be followed in the matter of granting copies of records :

Provided that in the case of appeals filed before a Munsif under sub-section (6) of section 9 or before a Special Judge under sub-section (5) of section 51A, the procedure laid down in the High Court Civil Rules and Orders in respect of such matters shall be followed.

32. *Fees and process fees* :—The fees and process fees payable under these rules shall be paid in Court-fee stamps.

## SCHEDULE A

1. *Procedure for revision or preparation of record-of-rights* :—When an order has been made under section 51 directing that a record-of-rights be revised or prepared by a Revenue Officer in respect of the land of any district or part thereof the record-of-rights shall be revised or prepared by the following processes, namely :—

(*i*) Traverse survey ;
(*ii*) Cadastral survey ;
(*iii*) Preliminary record writing (or Khanapuri) ;
(*iv*) Local explanation (or Bujharat) ;
(*v*) Attestation ;
(*vi*) Publication of the draft record-of-rights ;
(*vii*) Disposal of objections ;
(*viii*) Preparation and publication of the final record-of-rights ;

Provided that any of the steps referred to in items (*i*) to (*v*) may be omitted or amalgamated with another with the previous permission of the State Government :

Provided further that a Revenue Officer who has been appointed with the additional designation of "Settlement Officer" may, at any time before final publication of the record-of-rights, direct that any portion of the proceedings in respect of the revision or preparation of the record-of-rights of any district or part thereof, shall be cancelled and that such proceedings shall be carried out *de novo* from such stage as he may direct.

2. *Traverse Survey* :—The cadastral survey of any district or part of a district in respect of which an order under sub-section (1) of section 51 for revision or preparation of record-of-rights has been made, shall be based upon a traverse survey, and such traverse survey shall ordinarily be carried out by theodolite observations.

3. *Cadastral Survey* :—(1) In the course of proceedings under sub-section (1) of section 51 a large-scale map showing roads, rivers, railways and other physical features of the country, as well as homesteads and other fields, shall be prepared for each village as adopted in the general land revenue survey which has been made in the State of West Bengal or in any survey

made by the State Government by notification in the *Official Gazette* as defining village in any specified area :

Provided that for any specified area, whether previously notified as a village or not, the State Government may direct that the preparation of a map as aforesaid be dispensed with or that such map be prepared either by adopting any map or plan previously prepared by the Government or by any local authority or by any private party after such modification, if any, as may be considered necessary with a view to representing the existing state of affairs, for the purpose of the revision or preparation of the record-of-rights under the Act ;

(2) When the area contained within the external boundaries of the village maps of the previous survey contemplated by sub-paragraph (1) is unsuitable as the unit of survey and record, the Settlement Officer shall, after ascertaining as far as possible, the opinions of the *raiyats* concerned, submit his proposals for the determination of the area to be adopted as the unit of record and survey to the Board of Revenue through the controlling officers to whom he is subordinate. That unit shall, if sanctioned by the Board of Revenue, be adopted in framing the record-of-rights and shall be deemed to constitute a village when a notification adopting it as such has been issued in the *Official Gazette* by the State Government. The Board of Revenue shall submit a copy of its order in each case to the State Government for the issue of the notification.

4. *Khanapuri* :—At this and the two following stages the draft record-of-rights shall be revised or prepared. The draft record shall consist of statements of rights which are hereinafter styled the khatians. There shall ordinarily be a separate khatian for each person interested, or each group of persons jointly interested, in the land and each khatian shall show the rights and liabilities of each person or group of persons according to the particulars referred to in rule 23. At this stage all such particulars shall be entered in the draft record-of-rights. At this stage there shall be prepared a field index or kharsa arranged according to the serial numbers of the fields in the village. This field index shall not form part of the draft record-of-rights.

5. *Bujharat* :—When the areas of the fileds have been extracted and entered in the draft record-of-rights, a copy of

each khatian shall be made over by a Revenue Officer to the person or body of persons in whose name or names the khatian has been opened or to their representatives. Each khatian shall then be examined on the ground, with reference to the village map, by a Revenue Officer or such other person as may be authorised by him in this behalf and explained to the person or persons concerned or their representatives, if present. In this process the Revenue Officer or the authorised person shall make such corrections as are necessary in the map, in the draft record, and in the copies of the khatians which have been distributed, if they can be produced for this purpose. At this stage entries of the revenue and cesses which are payable according to the statement of the raiyat shall be made in the draft khatians of the raiyats and in such copies as are produced ; but the other particulars which were omitted at the stage of khanapuri record writing shall be deferred until the stage of attestation.

6. *Attestation* :—(1) The attestation of each village shall be taken up at a convenient place in or near the village as far as possible. Before attestation begins the Revenue Officer may cause a plot to plot enquiry and survey where necessary, for incorporating changes in maps previously prepared and for making a preliminary record of the names of possessors of each plot in operation where stages referred to in items (*i*) to (*iv*) of paragraph 1 have been omitted. A proclamation shall also be published before attestation begins in the village giving due notice to the *raiyats* and calling upon them to appear before the Revenue Officer on the date fixed, with relevant documents in support of their title and possession. The proclamation shall also specify that all persons who have derived or lost interest in any khatian should invariably be present at the time of attestation and that all changes which occurred in any holding since the last preparation of the finally published record-of-rights due to—

(*a*) inheritance, succession, transfer or otherwise ;
(*b*) amalgamations or subdivision of holdings ;
(*c*) new settlement ; or
(*d*) any other reasons

shall be brought to the notice of the Revenue Officer. As each person appears before him the Revenue Officer shall examine his khatian, read out all the entries, make corrections where

required, and see that the khatian is complete in all particulars. Disputes regarding the ownership of land, or the ownership of any interest in land, shall be decided by the Revenue Officer in a summary manner and on the basis of present possession. In the khatian of each *raiyat* or group of *raiyats* he shall enter with his own hand, the special conditions and incidents (if any) of the tenancy and the revenue lawfully payable to the State Government. Where revision is being made of previously prepared record-of-rights and finally published under any law for the time being in force, no fresh entry regarding these details is necessary, if they are found to be correct on the basis of present and actual possession or possession during the period stated above. In each of the khatians attested the cesses lawfully payable to the State Government shall be recorded. The Revenue Officer shall then sign and date the office copy of the khatian. When the Revenue Officer has completed the attestation of all the khatians of a village he shall draw up a formal proceeding to that effect.

(2) If during the enquiry and survey referred to in sub-paragraph (1) it appears to the Revenue Officer that the area contained within the external boundaries of the village maps of the previous survey is unsuitable as the unit of survey and record, he shall, after ascertaining as far as possible the opinion of the *raiyats* concerned, submit his proposals for the determination of the area to be adopted as the unit of record and survey to the Board of Revenue through the Controlling Officers to whom he is subordinate. Thereafter the procedure laid down in sub-paragraph (2) of paragraph 3 shall apply *mutatis mutandis*. In causing the aforesaid enquiry and survey, the Revenue Officer may also incorporate in the last settlement maps the plans prepared by other departments of Government as well as by private parties after such check as he considers necessary with a view to represent the existing state of affairs.

7. *Allotment of separate plot numbers* :—Where the land has been partitioned the Revenue Officer may assign such separate plot numbers as may be needed for the purpose.

8. *Draft publication, disposal of objections and final publication of the record-of-rights* :—(1) Draft publication of the record-of-rights, disposal of objections and the final publication of the record-of-rights shall be made in the manner provided by rules 24 and 25.

(2) When a record-of-rights is placed for final publication a certificate in the following form shall be attached to the first volume of record-of-rights of each village :—

Certificate of final publication

Village.....
Thana.....
District.....
Volume.....
Pages.....

Certified that the record-of-rights of the interests as contained in the pages noted above is finally framed and published under sub-section (2) of section 51A of the West Bengal Land Reforms Act, 1955 (West Ben. Act X of 1956), on this day of.....19.....
Date.....

Revenue Officer.

The certificate shall be sealed with the seal of the Settlement Officer. Each page of the final record shall be stamped with a seal in the following form :—

Record-of-rights finally framed and finally published under sub-section (2) of section 51A of the West Bengal Land Reforms Act, 1955 (West Ben. Act X of 1956).

## SCHEDULE B

### Powers of officers making surveys and revising or preparing record-of-rights

1. When a Revenue Officer is appointed for the purpose of revising or preparing record-of-rights under section 51 in respect of any district or part of a district, he shall be appointed either with or without the additional designation of 'Settlement Officer" or "Assistant Settlement Officer".

2. (*i*) A Revenue Officer appointed with the additional designation of "Settlement Officer" may, by general or special order, make over for disposal to any Assistant Settlement Officer subordinate to him objections under sub-section (1) and application under sub-section (4) of section 51A.

(*ii*) A Revenue Officer appointed with the additional designation of "Settlement Officer" may also withdraw from the file of any Assistant Settlement Officer subordinate to him any of the proceedings mentioned in clause (*i*) and may dispose of them himself, or transfer them for disposal to any other Assistant Settlement Officer subordinate to him.

3. In respect of all operations under section 51 of the Act which will be placed under the administrative control of the Director of Land Records and Surveys that officer is hereby appointed to discharge all the functions of a Revenue Officer under the said section and is vested with all the powers of a settlement Officer under this Schedule.

4. (1) Except where otherwise provided for by the Act or by these rules, all proceedings and orders of Revenue Officers, passed in the discharge of any duty imposed upon them by or under the Act shall be subject to the supervision and control of the State Government ; and the proceedings and orders of each Revenue Officer under the Act shall be subject to the supervision and control of the Revenue Officers to whom he may be declared by the State Government to be, for the purposes of the Act, subordinate.

(2) The State Government may by general or special order cancel any proceedings including the proceedings for draft publication or final publication, of the record-of-rights in any district or a part of a district in respect of all interests or a category of interests if in its opinion such action is necessary for carrying out the purposes of the Act and direct such proceedings to be carried out *de novo* :

Provided that notwithstanding anything hereinbefore contained, if in any case a record-of-rights finally framed and finally published under sub-section (2) of section 51A becomes worn out or otherwise unfit for use, the Revenue Officer, after recording the reasons therefor shall reconstruct such record-of rights by preparing copies therefrom. When the record-of-rights has been so reconstructed the Revenue Officer shall certify it to be a true copy of the said finally framed and finally published record-of-rights and such copy shall then be treated as the record-of-rights finally framed and finally published under sub-section (2) of section 51A.

[1][FORM No. al

(*See* rule 3A.)

**Application for permit for quarrying sand or for digging of earth and clay for the manufacture of bricks and tiles**

To the Additional District Magistrate

(Through the Junior Land Reforms Officer).

Sir,

I have the honour to apply for a permit for quarrying s' or for digging or using earth and clay for the manufacture of bricks and/or tiles for commercial purpose/to allow Shri.....son of....., address.....to quarry sand or to dig or use earth and clay for the manufacture of bricks and/or tiles for commercial purpose.

The particulars of the land with respect to which such permission is required are furnished below :

1. Name of mauza in which the land is situated with jurisdiction list No. :
2. Khatian No. and Plot No. :
3. Name of police station/district :
4. Class of land :

   If agricultural land, whether double cropped or fit for double cropping :
5. Rent/Cess payable :
6. Area of the holding :
7. Area of the land and whether the entire area or part of it will be used for the manufacture of bricks and tiles/quarrying sand :

If part plot, specify the area and portion.

Name of applicant.....

Address.....]

[1]Inserted vide notification No. 6886 L. Ref., dated 18th April 1967.

[1][FORM No. bl
(*See* rule 3B.)

Permit No.

year

Name of the Permit holder.....
(Raiyat).

Address.....

You are permitted, or permitted to allow Shri..... of....., to quarry sand/or to dig or use earth or clay from the land comprised in cadastral survey plot No..... ....., in mauza....., jurisdiction list No..... .....police station....., district..... ....., measuring.....hectare, for a period .....from.....to.....for the manufacutre of bricks or tiles/ quarrying sands for commercial purpose and subject to the terms and conditions laid down on the reverse.

Signature of the
Permit Issuing Authority.

Terms and conditions :—

(a) the raiyat shall not himself, or permit any person to, quarry sand or dig or use any earth or clay from his land except under a lease granted under the Mines and Minerals (Regulation and Development) Act, 1957 (Act No. 67 of 1957) ;

(b) the raiyat shall pay revenue and cess regularly ;

(c) the raiyat shall not transfer the permit to any person ;

(d) the raiyat shall allow the Additional District Magistrate, the Subdivisional Officer, the Subdivisional Land Reforms Officer, the Junior Land Reforms Officer or any other officer authorised by the Additional District Magistrate in this behalf, to enter upon the land for inspection ;

(e) for actual operation of quarrying or digging or using 3 metres clear margin for every 2.5 metres depth shall be kept from the outer boundary of the adjacent plot or plots and maintained throughout the operation or the sides of the quarry shall be terraced so as to form benches in a manner

[1]Inserted vide notification No. 6886 L. Ref., dated 18th April 1967.

where the height of any bench shall not be more than the width of the bench and a clear margin of 3 metres shall be kept and maintained from the outer boundary of the adjacent land ;

(f) the permit may be cancelled at any time for any breach of the conditions :

(g) the raiyat shall be wholly responsible for any breach of the conditions by the person to whom permission may be given by him for carrying out the operation.]

[1]FORM No. 1

(*See* rule 4)

**Notice for showing cause under sub-section (2B) of section 4**

To

(Name and address of the *raiyat*.)

Whereas it appears to me that you have dug/use...../permitted.....to dig/use earth/clay of your holding particulars of which are given below for the manufacture of bricks/tiles for the purpose of....., or have quarried/permitted to quarry sand from your holding, without the previous permission in writing of the State Government/Additional District Magistrate authorised under sub-section (2A) of the said section/in contravention of the terms and conditions of the permission given in this behalf I do hereby call upon you to show cause on or before.....why action should not be taken against you under sub-section (2B) of section 4 of the West Bengal Land Reforms Act, 1955.

Particulars of the holding

1. District, police-station :—
2. Name of the village with jurisdiction list :—
3. Khatian No. and plot No :—

Prescribed authority

[1]Substituted by notification No. 6886 L. Ref., dated 18th April 1967.

FORM No. 2

(*See* rule 6)

**[Statement to be submitted by a raiyat indicating his choice for retention of lands under sub-section (1) of section 6.]**

1. (*a*) Name and addresses of the *raiyat*.....
(*b*) Father's/husband's name.....

2. Description of the land owned by the *raiyat* excluding homestead—

(*i*) District, police-station.....
(*ii*) Names of mouzas with their jurisdiction list No....
(*iii*) Khatian Nos. and plot Nos.....
(*iv*) Total area.....

3. Description and boundaries of the land the *raiyat* would like to retain—

(*i*) District, police-station.....
(*ii*) Names of mouzas with jurisdiction list Nos.....
(*iii*) Khatian Nos. and plot Nos.....
(*iv*) Total area.....

I declare that to the best of my knowledge and belief the information given by me in the above statement is correct and complete and also truly stated.

(Signature of the *raiyat*)

FORM No. 3

**Order under sub-section (1) of section 6**

(*See* rule 6)

To .(name of the raiyat.)

(Address)

Whereas the State Government is satisfied that you own .....acres of land which is in excess of the permissible limit, namely, 25 acres, as provided in sub-section (3) of section 4 of the West Bengal Land Reforms Act, 1955 (West Bengal Act X of 1956), the State Government are entitled to take over the excess area of the land owned by you under sub-section (1) of section 6 of the said Act.

You are therefore required hereby to deliver possession on.....of the said excess area of the land, namely.....acres, as detailed in the Schedule below which you have decided not to retain to Shri..... who has been duly authorised for the purpose.

**The Schedule.**

Dated this the day of

By order of the Governor,

Revenue Officer.

FORM No. 4

(*See* rule 7)

**Notice under sub-section (1) of Section 9 of application for transfer by co-sharer/contiguous tenant**

To

Village.....

Post Office.....

District.....

Take notice that an application has been made by..... .....for transfer to him of the portion/share of the holding specified in the schedule on the reverse and that he has deposited the consideration money together with a further sum of ten per cent. of that amount.

You are hereby called upon to appear before me on or before.....and prove the consideration money paid for the transfer and other sums, if any, properly paid by you in respect of the lands including any sum paid for annuling incumbrances created prior to the date of transfer and rent or revenue, cesses or taxes for any period.

Revenue Officer.

(Reverse)

**The Schedule**

Column 1—Name, father's/husband's name and residential address of the applicant/applicants.

Column 2—Village, police-station and district in which the land is situated.

Column 3—Khatian No. and plot No. of the holding of which a portion or share was transferred with area of the portion or share transferred.

Column 4—Nature of transfer.

Column 5—Annual revenue payable for the portion or share of the holding.

Column 6—Consideration money or value as set forth in the document of transfer or sale price in the case of sale in execution of decree or certificate or market value determined by Court in case of foreclosure of mortgage.

Column 7—Remarks.

FORM No. 5

(*See* rule 9)

**Application for remission or abatement of revenue under sub-section (1) of section 11**

To

The Revenue Officer of.....

The application of.....son/wife of.....resident of.....for remission/abatement of revenue in respect of diluviated holding particulars of which are given below :—

1. Particulars of the land—
   (*a*) District, subdivision, police-station.
   (*b*) Name of village with its J. L. No.
   (*c*) Plot No. and area of the holding.
2. Area of the land diluviated.
3. (*a*) Revenue or rent payable for the holding.
   (*b*) Cesses payable for the holding

The particulars given above are true to the best of my knowledge and belief.

Signature.

FORM No. 6

(*See* rule 10)

**Notice of partition of holding under sub-section (2) of section 14**

To

Take notice that the holding specified in the schedule on the reverse has been partitioned among co-sharer *raiyats* as specified in the said Schedule by an instrument registered on.....in the sub-registry office..... police-station....., district.....

Sub-Registrar.

(Reverse)

**The Schedule**

Column 1—Villages, police-station and district in which the holding is situated.

Column 2—Khatian No. and plot No. and area of the holding.

Column 3—Annual revenue of the holding.

Column 4—Names, father's/husband's names and addresses of co-sharer *raiyats*.

Column 5—Area allotted to each co-sharer according to the partition deed.

Column 6—Revenue payable for each share.

Column 7—Remarks.

FORM No. 7

(*See* rule 12)

**Application for redemption of Usufructuary mortgage under sub-section 14C**

To

The Revenue Officer of.....

The application of....., son/wife of..... resident of....., for redemption of usufructuary mortgage particulars in respect of which are given below :-

1. Name and address of the mortgagee.....
2. Date of execution of the mortgage deed.....
3. The period of the mortgage.....
4. The period which has expired since the transfer of the land to the mortgagee.....

5. The amount of loan taken under the mortgage.....
6. Approximate money value of the annual produce from the land at the time of transfer.....
7. Particulars of the holding under mortgagee.
   (*a*) Name of the village, police-station and district.....
   (*b*) Khatian No. and plot No. of the holding.....
   (*c*) Area of the holding.....

I declare that to the best of my knowledge and belief the information given by me in the above statement is correct and complete.

Signature of the Applicant/Agent

FORM No. 8

(*See* rule 18.)

**Particulars of receipt.**
**(Counterfoil.)**

1. Serial No. of receipt :
2. Name of district :
3. Touzi No. to which the land appertains:
4. Name of Circle :
5. Name of village, thana :
6. Jamabandi number :
7. Name and father's name and residence of the raiyat :
8. Particulars of the holding for which revenue is paid—
   (*a*) Khatian No. :
   (*b*) Plot No. :
   (*c*) Area :
9. Annual demand of the holding—
   (*a*) Annual revenue :
   (*b*) Annual Road and Public Works Cesses :
   (*c*) Annual Education Cess :
   (*d*) Miscellaneous demand :
   (*e*) Total :

**Particulars of receipt.**
**(Tenant's portion.)**

1. Serial No. of receipt :
2. Name of district :
3. Touzi No. to which the land appertains :
4. Name of Circle :
5. Name of village, thana :
6. Jamabandi number :
7. Name and father's name and residence of the raiyat :
8. Particulars of the holding for which revenue is paid—
   (*a*) Khatian No. :
   (*b*) Plot No. :
   (*c*) Area :
9. Annual demand of the holding—
   (*a*) Annual revenue :
   (*b*) Annual Road and Public Works Cesses :
   (*c*) Annual Education Cess :
   (*d*) Miscellaneous demand :
   (*e*) Total :

**Particulars of receipt. (Counterfoil.)**

10. Amounts due at the beginning of the year—
    (*a*) Under each of the clauses of item 9 and the years for which they are due :
    (*b*) As interest on the amount due under the said clauses :
11. By whom paid :
12. Amounts paid—
    Revenue—
    (*a*) Arrear :*
    (*b*) Interest :
    (*c*) Current :
    (*d*) Advance :
    Cesses—Road, Public Works and Education Cesses—
    (*a*) Arrear :*
    (*b*) Interest :
    (*c*) Current :
    (*d*) Advance :
    Miscellaneous—
    (*a*) Arrear :*
    (*b*) Interest :
    (*c*) Current :
    (*d*) Advance :
    Total of each of the above items—
    Grand Total in words—
13. Date of payment:
    signature of the tahasildar or the person receiving the payment.

*State the year or the instalment in respect of which payment is made.

Note.—When payment is made by cheque its particulars should be noted here.

**Particulars of receipt. (Tenant's portion.)**

10. Amounts due at the beginning of the year—
    (*a*) Under each of the clauses of item 9 and the years for which they are due :
    (*b*) As interest on the amount due under the said clauses :
11. By whom paid :
12. Amounts paid—
    Revenue—
    (*a*) Arrear :*
    (*b*) Interest :
    (*c*) Current :
    (*d*) Advance :
    Cesses—Road, Public Works and Education Cesses—
    (*a*) Arrear :*
    (*b*) Interest :
    (*c*) Current :
    (*d*) Advance :
    Miscellaneous—
    (*a*) Arrear :*
    (*b*) Interest :
    (*c*) Current :
    (*d*) Advance :
    Total of each of the above items—
    Grand Total in words—
13. Date of payment:
    signature of the tahasildar or the person receiving the payment.

*State the year or the instalment in respect of which payment is made.

[1]FORM No. 8A

[See rule 20(A)]

DEED OF SETTLEMENT

THIS INDENTURE made this day of one thousand nine hundred and..... BETWEEN THE GOVERNOR OF THE STATE OF WEST BENGAL hereinafter referred to as the 'GOVERNOR' (which expression shall include his successor in office and assigns) of the ONE PART AND , son of , of Village , Police-station , Sub-division , District hereinafter referred to as the 'RAIYAT' (which expression shall unless excluded by or repugnant to the context be deemed to include his heirs executors administrators representatives and assigns) of the OTHER PART.

WHEREAS the Raiyat has approached the Government of West Bengal (hereinafter referred to as the 'Government') for granting and demising unto him the land referred to in the Schedule hereunder written as a raiyat under the West Bengal Land Reforms Act, 1955, for agricultural purposes.

AND WHEREAS the Collector/Additional District Magistrate of the District of has been satisfied as to the eligibility of the said Raiyat to have and to hold the said land mentioned and described in the Schedule hereunder written and the Government has decided to demise and grant unto the Raiyat the said land subject to the terms and conditions hereinafter expressed.

NOW THIS INDENTURE WITNESSETH as follows :—

1. That the Governor doth hereby grant and demise to and unto the said Raiyat the lands mentioned and described in the Schedule hereunder written as from the first day of Baisakh B.S. to hold the same as a raiyat under the provisions of the West Bengal Land Reforms Act, 1955 or any statutory modification thereof and any rules framed thereunder for the time being in force subject to the payment of the

[1]This form 8A has been added by notification No. 8416. L. Ref. d/- 1. 7. 1968 Published in Cal. Gaz. Extra-ord. part I d/- 6. 7. 1968 pp. 1627-1629.

revenue and the observance, performance and fulfilment of the terms, conditions and convenants herein contained on the part of the Raiyat hereinafter contained.

2. The Raiyat to the intent that the obligation shall continue throughout the period of his holding the said lands as aforesaid hereby agrees and convenants with the Governor as follows:—

(a) That the Raiyat shall pay the revenue for the said land at the rate of Rs. per annum. PROVIDED ALWAYS that the said rate of revenue may be revised by the Government as may be permissible in law from time to time and in case of such revision the Raiyat shall pay the said revenue so fixed on revision.

(b) That besides the said revenue payable by the Raiyat, the Raiyat shall duly and punctually pay all cesses, taxes and other impositions as may be assessed to be payable in respect of the said lands or on the person in possession or occupation thereof.

(c) That the Raiyat shall diligently cultivate the said lands by his own labour or by the labour of the members of his family and shall not use the said lands for any non-agricultural purpose.

(d) That the Raiyat shall duly observe, fulfil and perform all provisions of the said Act or any other law for the time being in force and applicable to the tenancy hereby created and abide by all rules and regulations as may be applicable to the said lands or to the tenancy hereby created.

3. That the Governor doth hereby covenant with the Raiyat that the Raiyat observing, fulfilling and performing all the terms, obligations and covenants hereinbefore contained shall enjoy the said lands as a raiyat without any interruption by the Governor or the Government or any Officer of the Government.

4. PROVIDED ALWAYS AND IT IS HEREBY AGREED that in case of breach on the part of the Raiyat of any of the terms, conditions and covenants hereinbefore contained,

the Governor shall have the right and be entitled to take appropriate proceedings against the Raiyat or take steps for the enforcement of the rights of the Government as provided in law for the time being in force.

## THE SCHEDULE ABOVE REFERRED TO :

* * * * *

Lands comprised in C.S. plot No. , Khatian No. in mauza (J.L. No. ), P.S. in the Subdivision of District measuring acre ( hectare) more or less and valued at Rs. (Rupees ) only.

IN WITNESS WHEREOF the parties to these presents have hereunto set and subscribed their respective hands the day month and year first above written.

SIGNED for and on behalf of
the Governor of the State of
West Bengal by
in the presence of :

SIGNED by the said
(Raiyat)
in the presence of :

## FORM NO. 9

(*See* rule 24)

(Obverse)

Objection under sub-section (1) of section 51A

| | |
|---|---|
| No.....<br>Village Name and No..... | Seventy-five paisa Court-Fee Stamp. |
| 1. Name, father's name, and address of objector. | |
| 2. Name, father's name, and address of person against whose khatian objection is made. | |

| 3. Nos. of khatians under objection | 4. Nos. of plots, if any, under objection | 5. Nature of objection, *e.g.*, status rent, possession, etc. |
|---|---|---|
| | | |

| | |
|---|---|
| 6. Matters objected to with details of objection, and the relief sought. | |
| 7. Signature of objector and date | |

Objection No.....Objection duly received and entered.
Village name and No.....

Revenue Officer.

(Reverse)

| Present on behalf of objector. | Present on behalf of the other party. |
|---|---|

Grounds of decision and order.

Order in Bengali

| Corrections in Khatian under objection, according to order. | | Corrections in corrollary Khatians. | |
|---|---|---|---|
| Signature in token of "tamil" and date. | Signature in token of final janch and date. | Signature in token of "tamil" and date. | Signature in token of final janch and date. |
| | | | |

## APPENDIX D

# STATEMENT OF OBJECTS AND REASONS OF THE WEST BENGAL LAND REFORMS ACT, 1955[1]

Abolition of the Zemindari system has been effected by the West Bengal Estates Acquisition Act, 1953, which provides for the vesting of all estates and the rights of every intermediary therein in the State free from all incumbrances. It is necessary to follow up that Act by a comprehensive measure of land reforms so as to remodel the existing system of land tenure by providing for such matters as—

(*a*) the rights, obligations and incidents in respect of the holdings of *raiyats*;

(*b*) limitation on transfer and sub-letting of land so as to prevent accumulation of lands in a few hands or any land being acquired by non-agriculturists;

(*c*) control and regulation of the share-produce system of cultivation;

(*d*) introduction of a rational system of assessment on land, consolidation of holdings, formation of co-operative farms and concessions and facilities for such farms;

(*e*) maintenance and revision of record of rights and

(*f*) other matters in regard to rights in land and management thereof.

This Bill has been framed with the above objects in view.

S. K. BASU
*Member-in-charge.*

CALCUTTA,
*The 7th December,* 1954.

[1] Published in Cal. Gaz. Extra-ord. d/—10. 12. 1954.

## APPENDIX E

# STATEMENT OF OBJECTS AND REASONS OF THE WEST BENGAL LAND REFORMS (AMENDMENT) ACT, 1965[1]

The provisions of the West Bengal Land Reforms Act, 1955, except those relating to *bargadars* and a few other related matters, could not be enforced so long because of the delay in the preparation of the record-of-rights. The preparation of the record-of-rights has now been completed except in a few small areas in some districts. It is, therefore, necessary to give effect to the remaining provisions of the Act.

2. Before this is done, it is considered necessary to make better provisions for certain matters and to remove some lacunæ in the Act. It is accordingly proposed to amend the Act:—

(*i*) to exclude tea-gardens from the purview of the Act ;

(*ii*) to restrain a *raiyat* from digging or using earth and clay of his holding for the manufacture of bricks or tiles, except for his own use, without the permission in writing of the State Government ;

(*iii*) to define certain rights of the *raiyat* in respect of his holding ;

(*iv*) to predlude accrual of the right of a *riayat* in land gained by gradual accession to his holding from the recess of a river or sea ;

(*v*) to provide for the resumption and resettlement of land abandoned by a *raiyat* without notice to the State Government and without arranging for payment of revenue ;

(*vi*) to make comprehensive provisions regarding alienation of land by a *raiyat* belonging to a Scheduled Tribe ;

(*vii*) to prescribe a time-limit for filing of an application by an owner claiming his arrear share of the produce from a *bargadar* ;

[1] Published in Cal. Gaz. Extra. ord. d/—9. 7. 1964 Page 2128.

(*viii*) to empower an officer or authority mentioned in sub-section (2) of section 18 to allow time to the *bargadar* to deliver the share of the produce due to the owner or to pay the price thereof by annual instalments in cases where the *bargadar made* default in the delivery of such share due to doubt as to whether the land had vested in the State under the West Bengal Estate Acquisition Act, 1953 ;

(*ix*) to empower a Munsif hearing an appeal under sub-section (1) of section 19 to make, for sufficient cause, an order staying execution of the order appealed against ;

(*x*) to revise the existing principles of assessment of revenue ;

(*xi*) to make comprehensive provisions for revision of record of rights ; and

(*xii*) to provide for other ancillary matters.

3. The Bill has been framed with the above objects in view.

S. BHATTACHARYYA,
*Member-in-charge.*

CALCUTTA,
*The 6th July,* 1964.

APPENDIX F

# STATEMENT OF OBJECTS AND REASONS OF THE WEST BENGAL LAND REFORMS (AMENDMENT) ACT, 1968 (PRESIDENT ACT NO 1 of 1968)

Under the West Bengal Land Reforms Act, 1955, it is the duty of the bargadar to deliver to the owner of the land his share of the produce. In case of any default on the part of the bargadar, the owner has the right of going to the officer or authority appointed under section 18 of the Act and obtaining from him an order compelling the bargadar to deliver the share of the crop or its money value to the owner. But the bargadar had no corresponding right or remedy in the event of the owner of the land harvesing or taking away the whole of the crop forcibly or otherwise. For the sake of equity the Government of West Bengal considered it expedient that the bargadar would be given the same right and remedy as the owner of the land has in the matter of recovery of his share of the produce or its money value. For this purpose the Government of West Bengal promulgamated on the 22nd December, 1967 the West Bengal Land Reforms (Amendment) Ordinance, 1967 (West Bengal Ordinance no XII of 1967).

The proposed measure seeks to replace the said Ordinance. As the punishment for the breach of the provisions of section (2A) of section 4 is not sufficiently deterrent opportunity is also taken in this measure to amend sub-section (2B) of that section in order to enhance the punishment provided therein.

As it is not practicable to refer the present legislation to the consultative committee of Parliament on West Bengal legislation, it has been decided, in view of the ungency of the matter, to enact the present legislation without such reference.

## APPENDIX G

### West Bengal Ordinance[1] No. III of 1969

# THE WEST BENGAL LAND REFORMS (AMENDMENT) ORDINANCE 1969

WHEREAS it is expedient to amend the West Bengal Land Reforms Act, 1955 (*West Ben. Act X of* 1956 for the purpose and in the manner hereinafter appearing.

AND WHEREAS both Houses of the Legislature of West Bengal are not in session and the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action ;

The Governor is pleased, in exercise of the power conferred by clause (1) of article 213 of the Constitution of India, to make and promulgate the following Ordinance, namely :—

**1.** *Short title.* This Ordinance may be called the West Bengal Land Reforms (Amendment) Ordinance, 1969.

**2.** *Insertion of new section* 21*A in West Ben. Act X of* 1956. In Chapter III of the West Bengal Land Reforms Act, 1955, after section 21, the following section shall be inserted, namely :—

21A. *Temporary stay of proceedings for termination of cultivation by bargadars.* Notwithstanding anything contained in this Chapter,—

(*a*) all application made under section 18 for the termination of cultivation by *bargadars*,

(*b*) all appeals preferred under section 19 against orders made on such applications, and

[1] This Ordinance was published in Calcutta Gazette Extra-ordinary d/-7th April, 1969 Pt. P. 1271. With effect from 7th April, 1969 it has been brought into force by reason of Sec. 6(1) Bengal General Clauses Act.

For notes in respect of section 21A see Pp. 96, 98, 112, 137-138.

(*c*) all proceedings commenced under sub-section (2) of section 20 for execution of orders for termination of cultivation by *bargadars,* which are pending before the appropriate authority at the date of commencement of the West Bengal Land Reforms (Amendment) Ordinance, 1969, or which may be so made, preferred or commenced after such date but before the expiry of the said Ordinance, shall be stayed for the period during which the said Ordinance continues in force .

D. N. SINHA,
*Governor of West Beng*

*The 7th April,* 1969.

## *West Bengal Ordinance No. VII of 1969

# THE WEST BENGAL ACQUISITION AND SETTLEMENT OF HOMESTEAD LAND ORDINANCE, 1969.

WHEREAS it is expedient to provide for the acquisition of land on which homestead has been constructed and settlement of such land with the person in possession thereof ;

AND WHEREAS both Houses of the Legislature of West Bengal are not in session and the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action ;

AND WHEREAS the instructions of the President under the proviso to clause (1) of article 213 of the Constitution of India have been obtained ;

The Governor is pleased, in exercise of the power conferred by clause (1) of the said article, to make and promulgate the following Ordinance, namely :—

**1.** *Short title and extent.* (1) This Ordinance may be called the West Bengal Acquisition and Settlement of Homestead Land Ordinance, 1969.

(2) It extends to the whole of West Bengal, except the areas to which the provisions of the Calcutta Municipal Act, 1951, the Howrah Municipal Act, 1965, the Bengal Municipal Act, 1932, the Cooch Behar Town Committee Act, 1903, the Cooch Behar Municipal Act, 1944, the Chandernagore Municipal Act, 1955, and the Cantonments Act, 1924 apply.

**2.** *Definitions.* In this Ordinance, unless there is anything repugnant in the subject or context,[1]—

*This Ordinance was first published in Cal. Gazette, Extra-Ordinary d/-22nd May, 1969 Pt. IIIA, P. 1721 1725 and by reason of section 6(1) Bengal General Clauses Act came into operation with effect from 22nd May, 1969.

[1]The definitions of the terms given in this section apply *unless there is anything repugnant in the subject or context.* The effect of this reservation is that where a term which has been given a defintion appears to have been used in a particular sense, in a particular context or a particular collocation of words, and that sense would seem to be in conflict with the meaning assigned to the term in this definition clause, then that contextual sense would prevail over the statutory definition thereof. All statutory definitions must be read subject to the qualifying words unless the context otherwise requires, even though the definition clause does

(*a*) [2] "agricultural land" means land ordinarily used for purposes of agriculture or horticulture and includes such land notwithstanding that it may be lying fallow for the time being ;

(*b*) [3] "Collector" means the Collector of a district and includes an Additional District Magistrate or any other officer appointed by the State Government to discharge any of the functions of a Collector under this Ordinance ;

(*c*) [4] "holding" means the land or lands held by a *raiyat* and treated as a unit for assessment of revenue ;

(*d*) [5] "homestead" has the same meaning as in the West Bengal Estates Acquisition Act, 1953 ;

(*e*) [6] "land" includes both agricultural land and non-agricultural land ;

(*f*) [6] "non-agricultural land" means land other than agricultural land or other than land comprised in a forest ;

not contain these words [*Vanguard Fire and General Insurance* v. *Fraser and Ross Ltd.*, A.I.R. 1960 S.C. 971; *V. K. Balakrishna* v. *Asoka Bank Ltd.*, A.I.R. 1966 Kerala 42.]

[2]A land lying temporarily fallow will answer the description of agricultural land provided it is ordinarily used for the purpose of agriculture or horticulture. For meaning of the expression agricultural purpose see Pp 22-23.

[3]Three classes of officers have been included within the category of "Collector" e.g., (a) Collector of the district, (b) Additional District Magistrate, (c) any other officer appointed by the State Government to discharge any of the functions of a Collector. For meaning of the expressions "Collector of a district" and "any other officer appointed" see notes at Pp. 19-20.

[4]The definition of the term is similar to that of holding defined in section 2(6) W. B. Land Reforms Act. For explantion of the term see notes at P. 21.

[5]Homestead has been defined in section 2(g) W. B. Estates Acquisition Act as follows: Homestead means a dwelling house together with any courtyard, compound, garden, out house, place of worship, family graveyard, library, office, guest house, tanks, wells, privies, latrines, drains and boundary walls annexed to or appertaining to such dwelling house.

[6]This piece of enactment thus brings within its ambit lands of both descriptions namely agricultural land and non-agricultural

(*g*) [7] "non-agricultural tenant" means a non-agricultural tenant as defined in the West Bengal Non-Agricul-cultural Tenancy Act, 1949 ;

(*h*) [8] "occupier" means a person who is in possession of any land of another person without any interest therein based on title and who holds no land or not more than .8094 hectare of land either as owner or tenant thereof and includes the heirs of such person;

(*i*) "prescribed" means prescribed by rules made under this Ordinance ;

(*j*) [9] "*raiyat* means a person who holds land for purpose of agriculture.

**3.** *Ordinance not to apply to certain lands.* Nothing in this Oridinance shall apply to any land—

(*a*) belonging to, or taken on lease or requisitioned by, Government ;

(*b*) belonging to, or taken on lease by, any local authority.

**4.** *Application to the Collector.* Where an occupier has constructed a homestead on the land in his possession and has been residing therein continuously for a period of not less than

land excepting forest lands. These clauses may be read in the background of section 1(2) of the Ordinance which expressly declares that the lands within Municipalities would not come within the purview of the Ordinance.

[7]The expression has been defined in section 2(5) W. B. Non-agricultural Tenancy Act. Primarily it means a tenant of non-agricultural land except those persons who hold any premise or part of any premise erected or owned by another person and who are or but for a special contract would be, liable to pay rent for such premises or such part of the premises to such persons. Non-agricultural tenant constitutes the genus of which one specis is tenant and the other under-tenants. Thus under-tenants too are non-agricultural tenants [*Sudhangshu Kr. Saha* v. *Pravalata Nandy*, 69 C.W.N. 836 at P. 839]

[8]The definition of the expression "Occupier" has been so worded that it brings within its scope the persons possessing under a licence from the real owner as well. In order to come within the description of the expression such possession need not be hostile.

[9]This definition of the expression "raiyat" is parimateria with the definition of the term raiyat given in section 2(10) W.B.L.R. Act. For notes see Pp. 21-22.

three years immediately before the date of coming into force of this Ordinance, he may, within two years from such date, make an application, in such manner and containing such particulars as may be prescribed, to the Collector having jurisdiction—

(*a*) if the land in his possession does not exceed .0334 hectare, for settling the land with him ; and

(*b*) if the land in his possession exceeds .0334 hectare, for settling .0334 hectare of such land with him on which his homestead has been constructed.[10]

**5.** *Inquiry by the Collector.* (1) On receipt of an application under section 4 the Collector shall make an inquiry in such manner as may be prescribed to determine whether an occupier has constructed a homestead on the land in his possession and has been residing therein continuously for the period referred to in section 4.

(2) Notwithstanding anything contained in section 4, the Collector may, on his own motion, make any inquiry referred to in sub-section (1) :

Provided that no such inquiry shall be started after the expiry of two years from the date of coming into force of this Ordinance.

[10]An occupier may apply to the Collector for settling with him at best .0334 hectare of land occupied by him provided (a) he has or his predecessor had constructed (for heir or an occupier too is an occupier) a homestead on the land in his possession, and (b) he or his predecessor has been residing therein continuously for a period of not less than three years immediatly before 22nd May, 1969. Such applications can be filed within two years from 22nd May, 1969.

On receipt of application the Collector is to make an enquiry as provided in section 11. The Collector may start the enquiry *suo motu* too. But no such enquiry can commence after the lapse of two years from 22nd May, 1969. Subsequent chapters describe the procedure to be adopted by the Collector. The land in occupation would be acquired by the Collector on payment of a compensation at the rate of 20 times the annual rent or revenue (rent in case of non-agr. land and revenue in case of agricultural land).

Inadequancy of compensation, as provided in art. 31(2), Constitution of India, is no ground for challenging the vires of an enactment if the enactment having been reserved for the assent

(3) For the purpose of an inquiry under sub-section (1) the Collector shall have all the powers of a civil court while trying a suit in respect of the following matters, namely :—

(*a*) summoning and enforcing the attendance of any person and examining him on oath ;

(*b*) requiring the discovery and production of documents ;

(*c*) receiving evidence on affidavits.

**6.** *Determination of the land.* If the Collector is satisfied on an inquiry under section 5 that an occupier has constructed a homestead on the land in his possession and has been residing therein continuously for the period referred to in section 4, he shall make an order for demarcating such land or where such land exceeds .0344 hectare, for demarcating .0334 hectare of such land on which the homestead has been constructed.

**7.** *Acquisition of land by the Collector.* (1) After demarcation of the land under section 6 the Collector shall, by publishing in the *Official Gazette* and in such other manner as may be prescribed a notice in this behalf, acquire the land so demarcated with effect from such date as may be specified in the notice.

of the President eventually receives his assent [vide art. 31 (3)]. A legislature in making a law of acquisition or requisition, however, shall have to provide for a just equivalent of what the owner has been deprived of or specify the principles for the purpose of ascertaining the just equivalent of what the owner has been deprived of [*Vajravelu* v. *Sp. Dy. Collector,* A.I.R. 1965 S.C. 1017]. So far as this Ordinance is concerned it has been promulgated with the instruction of the President which has the effect of its being reserved for the consideration of the President and eventually assented to by him. This instruction of the President brings this Ordinance within the immunity of art. 31A clause (1) of which lays down, interalia, that notwithstanding anything contained in art. 13 no law providing for the acquisition of any estate or of any rights therein or extinguishment or modification of any such rights by a State shall be invalid or shall be deemed to be invalid on the ground that it is inconsistent with or takes away or abridges any right conferred by arts. 14, 19, 31. For meaning of estate or rights in relation to an estate see art. 31(A) (2) (6), Constitution of India.

(2) When a notice is published under sub-section (1) in respect of any land such land shall, with effect from the date specified in the notice, vest absolutely in the State Government free from all encumbrances.

**8.** *Compensation.* When any land is acquired under section 7 there shall be paid compensation for such acquisition to every person interested and the amount of compensation shall be equivalent to twenty times of the annual revenue or rent, as the case may be, of such land to be determined by the Collector in the prescribed manner for the purpose of such compensation.

*Explanation.*—The expression "person interested" includes all persons claiming an interest in compensation to be paid on account of the acquisition of land under the provisions of this Ordinance and a person shall be deemed to be interested in land if he is interested in an easement affecting the land.

**9.** *Apportionment of compensation.* When there are several persons interested in the land acquired under section 7, the Collector shall by order apportion the compensation among such persons in accordance with the nature and extent of interest held by each such person.

**10.** *Occupier not liable to be evicted.* (1) An occupier shall not be liable to be evicted or dispossessed from the land demarcated under section 6, notwithstanding any judgment, decree or order of any court for such eviction or dispossession.

(2) In any suit or proceeding in any court for the eviction of an occupier from the land in his possession, including any such suit or proceeding pending on the date of coming into force of this Ordinance, the occupier may—

(*a*) if he has made an application under section 4, file a petition to the court supported by a certificate from the Collector to the effect that he has done so ;

(*b*) if an inquiry has been started by the Collector on his own motion under sub-section (2) of section 5, file a petition to the court supported by a certificate from the Collector to the effect that the Collector has started the inquiry ;

(*c*) if he has not made an application under section 4 and if no inquiry has been started by the Collector on his own motion under sub-section (2) of section 5, file a petition to the court stating that he intends to make an application under section 4.

(3) On receipt of a petition under sub-section (2), the court shall,—

(*a*) if the occupier has made an application under section 4, stay the suit or the proceeding till the disposal of the application ;

(*b*) if an inquiry has been started by the Collector on his own motion under sub-section (2) of section 5, stay the suit or the proceeding till the inquiry is made ;

(*c*) if the occupier has not made an application under section 4 and if no inquiry has been started by the Collector on his own motion under sub-section (2) of section 5, direct the occupier to file a certificate from the Collector within a period of three months or within such further period as the court may grant stating that an application under section 4 has been made and on the filing of such certificate stay the suit or the proceeding till the disposal of the application by the Collector.

(4) The certificate referred to in clauses (*a*) and (*b*) of sub-section (2) shall, on application by an occupier, be issued by the Collector in such manner as may be prescribed.

**11.** *Settlement of land and status of occupier.* (1) When land is acquired under section 7, the Collector shall settle it with the occupier who has made the application under section 4.

(2) The occupier to whom any land is settled under sub-section (1) shall have the status—

(*i*) of a *raiyat,* if such land is agricultural land, or

(*ii*) of a non-agricultural tenant,, if such land is non-agricultural land :

Provided that such occupier shall not be liable to pay any revenue or rent for such land.

**12.** *Abatement of revenue or rent.* Any person whose land has been acquired under the provisions of section 7 shall be entitled—

(*a*) if the land is included in any holding, to have the revenue payable by him abated by such amount as bears the same proportion to such revenue as the area of the land acquired bears to the area of such holding, and

(*b*) if the land is included in any non-agricultural tenancy, to have the rent payable by him abated by such amount as bears the same proportion to such rent as the area of the land acquired bears to the area of such tenancy.

**13.** *Appeal.* An appeal shall lie from an order under this Ordinance[1],—

(*a*) to the Collector of the district, where the order is made by an officer below the rank of an Additional District Magistrate, and

(*b*) to the Commissioner of the Division, where the order is made by the Collector of a district or an Additional District Magistrate,

[1]A question may arise whether the provisions of sections 4 to 24 Limitation Act, 1963 would apply to an appeal preferred under section 13. It is true that this piece of legislation is a special enactment. Nonetheless sections 4 to 24 of Limitation Act, 1963 which contain, interalia, the provisions of condonation of delay in filing appeal, exclusion of the period when the Court is closed, legal disability etc. should be allowed to be invoked in an appeal under this section. Firstly, because the change in the language of the preamble (vide P. 118) of Limitation Act suggests that the Act of 1963 applies to suits and other proceedings and for purposes connected therewith. The change in language is intended to cover all petitions, original and otherwise, and to provide periods of limitation of original petitions as well as to applications under the special law as observed in U. N. Mitra on Limitation and Prescription, 8th Edn. P. 13. Secondly because if it is assumed that a period different from one prescribed in the first schedule of Limitation Act, 1963 has been prescribed, even then sections 4 to 24 would apply by reason of section 29(2) of Limitation Act, 1963, for, the operation of the sections have not been excluded expressly.

if preferred within thirty days from the date of the order appealed against and the decision of the Collector or of the Commissioner, as the case may be, shall be final.

**14.** *Ordinance to override other laws.* The provisions of this Ordinance shall have effect notwithstanding anything to the contrary contained in any other law or in any contract express or implied or in any instrument and notwithstanding any usage or custom to the contrary.

**15.** *Power to make rules.* (1) The State Government may make rules for carrying out the purposes of this Ordinance.

(2) In particular, and without prejudice to the generality of all or any of the following matters, namely :—

(*a*) the form and manner of making application under section 4 ;

(*b*) the manner of making inquiry under sub-section (1) of section 5 ;

(*c*) the manner of publishing a notice under sub-section (1) of section 7 ;

(*d*) the manner of determining revenue or rent under section 8 ;

(*e*) the manner of issuing a certificate referred to in section 10 ;

(*f*) any other matter which has to be, or may be, prescribed.

## West Bengal Ordinance No. X of 1969[1]

# THE WEST BENGAL UTILISATION OF LAND FOR PRODUCTION OF FOOD CROPS ORDINANCE, 1969.

WHEREAS it is expedient to provide for the requisitioning of land with a view to better utilisation thereof for the production of food crops for meeting the shortage of food grains in West Bengal ;

AND WHEREAS both Houses of Legislature of West Bengal are not in session and the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action;

AND WHEREAS the instructions of the President under the proviso to clause (1) of article 213 of the Constitution of India have been obtained ;

The Governor is pleased, in exercise of the power conferred by clause (1) of the said article, to make and promulgate the following Ordinance, namely :—

**1.** *Short title and extent.* (1) This Ordinance may be called the West Bengal Utilisation of Land for Production of Food Crops Ordinance, 1969.

(2) It extends to the whole of West Bengal.

**2.** *Definitions.* In this Ordinance, unless there is anything repugnant in the subject or context,—

(*a*) "agricultural year" means the Bengali year commencing on the first day of *Baisakh ;*

(*b*) "Collector" means the Collector of a district and includes an Additional District Magistrate, and a Sub-divisional Magistrate empowered by the State Government to discharge any of the functions of a Collector under this Ordinance ;

(*c*) "prescribed" means prescribed by rules made under this Ordinance.

**3.** *Power to requisition.* (1) The Collector may, by order in writing, requisition any land if he is of opinion that such

[1] This Ordinance was published in Cal. Gazette, Extra-ord., d/-3. 6. 1969, Pt. IIIA, P. 1819-1821.

land is suitable for the production of food crops and is not likely to be utilised during the current or the ensuing agricultural season:

Provided that no land which forms part of any homestead or cremation or burial ground or of any place of worship shall be requisitioned under this section.

(2) Such requisition shall be made for such period, not extending beyond the agricultural year in which the order under sub-section (1) is made, as may be specified in the order.

(3) An order under sub-section (1) shall specify the date on which the possession of such land shall be delivered to the Collector.

(4) An order issued under sub-section (1) shall be served in such manner as may be prescribed upon the owner of the land and where the order relates to land in occupation of an occupier, not being the owner of the land, also on such occupier.

**4.** *Delivery of possession.* When an order for the requisition of any land is made under section 3, the person in possession of such land shall deliver possession thereof to the Collector or to any officer authorised by the Collector in this behalf on the date specified in the order and in default of his doing so, the Collector may take possession thereof by force, if necessary.

**5.** *Utilisation of land.* (1) As soon as may be after the Collector is in possession of any land requisitioned under section 3, he shall, by order in writing, make over possession thereof for such period not extending beyond the current agricultural year as he thinks fit to any person for utilising such land for the production of such food crop as may be specified in the order.

(2) In making over possession of any land under sub-section (1), the Collector shall whenever possible give preference to persons who own no land or less than .8094 hectare of land and who are residents of the locality where such land is situated and who intend to bring such land under personal cultivation.

(3) Any person to whom possession of any land has been made over under sub-section (1) shall be entitled to do in, on or with respect to, such land all things necessary for utilisation of such land for the production of such food crops as may be specified in the order issued under the said sub-section.

(4) Nothing in this section shall be deemed to confer on any person to whom possession has been made over under sub-section (1) the status of a tenant or to confer on him any transferable right.

**6.** *Delivery of produce or its money value to the Collector.* (1) Any person to whom possession of any land has been made over under sub-section (1) of section 5 or who has been allowed to continue to remain in possession of such land under clauses (*a*) of section 10 shall,—

(*a*) deliver to the Collector or to any officer authorised by the Collector in this behalf thirty-five *per cent.* of the gross produce from such land for any agricultural season or pay its money value to be determined by the Collector in such manner as may be prescribed, and

(*b*) after the expiry of the period for which possession has been made over to him under sub-section (1) of section 5 or he has been allowed to continue to remain in possession under clause (*a*) of section 10, give back possession of such land to the Collector or to any officer authorised by the Collector in this behalf and in default of his doing so the Collector may take possession thereof by force, if necessary.

(2) If such person fails to deliver the produce or the money value thereof referred to in clause (*a*) of sub-section (1) within such time as may be fixed by the Collector in this behalf, the money value shall be recoverable as a public demand.

**7.** *Compensation.* When any land is requisitioned under section 3, there shall be paid to every person interested compensation for such requisition and the amount of compensation shall be twenty-five *per cent.* of the gross produce from such land for the period for which such land has been requisitioned, or its money value determined under section :

Provided that if there is a total failure of crop from such land or if for any reason such land has not actually been utilised, the amount of compensation *per annum* shall be as the rate of three *per cent.* of the market value of such land on the date of the order of requisition.

*Explanation.*—The expression "person interested" includes all persons claiming an interest in compensation to be paid on account of the requisition of land under the provisions of this Ordinance and a person shall be deemed to be interested in land if he is interested in an easement affecting the land.

**8.** *Apportionment of compensation.* Where there are several persons interested in the land requisitioned under section 3, the Collector shall by order apportion the compensation among such persons in accordance with the nature and extent of interest held by each such person.

**9.** *Release from requisition or extension of the period of requisition.* After the expiry of the period for which land has been requisitioned under section 3, the Collector may,—

(*a*) release the land from requisition and deliver possession thereof to the person from whom possession was taken, or

(*b*) if he is of opinion that such requisition should continue, by order in writing, extend the period of requisition for such period not extending one agricultural year at a time, as he thinks fit, so, however, that the total period of requisition shall not exceed three agricultural years :

Provided that no order extending the period of requisition of any land shall be made without giving the owner, and if such land is in occupation of an occupier, also the occupier, an opportunity of being heard :

Provided further that the order for the extension of the period of requisition shall be made before the expiry of the period of requisition.

**10.** *Possession in case of extension of the period of requisition.* If the period of requisition is extended under clause (*b*) of section 9, the Collector may,—

(*a*) by order allow the person to whom possession has been delivered under sub-section (1) of section 5 to continue to remain in possession for such period not extending beyond the agricultural year as may be specified in the order ; or

(*b*) proceed under section 5 and make over possession of the land to another person.

**11.** *Appeal.* An appeal shall lie from an order made under this Ordinance,—

(*a*) to the Collector of the district, where the order is made by a Sub-divisional Magistrate, and

(*b*) to the Commissioner of the Division, where the order is made by a Collector of a district or an Additional District Magistrate,

if preferred within thirty days from the date of the order appealed against and the decision of the Collector or of the Commissioner, as the case may be, shall be final.

**12.** *Power to make rules.* (1) The State Government may make rules for carrying out the purposes of this Ordinance.

(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 manner of service of the order referred to in sub-section (4) of section 3 ;

(*b*) the manner of determining gross produce from any land ;

(*c*) the manner of determining money value of the gross produce from any land.

D. N. SINHA,

*The 2nd June,* 1969. *Governor of West Bengal.*

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# THE WEST BENGAL LAND REFORMS ACT

## ADDENDA

W. B. Land Reforms (Amendment) Act, 1969 (Act XI of 1969), re-enacts Sec. 21A added by W. B. Land Reforms (Amendment) Ordinance, 1969 (this Section 21A has been set out at P. 137)

And

W. B. Land Reforms (Second Amendment) Act, 1969 reenacts the provisions of W. B. Land Reforms Amendment Act, 1968 (President's Act 1 of 1968) and adds Sec. 23A into the Act

And

West Bengal Acquisition and Settlement of Homestead Land Ordinance and West Bengal Utilisation of Land For Production of Food Crops Ordinance, 1969 have been converted into enactments by regular legislative processes. The following addenda thus is given.

At Page 27 : after the second and third footnote please *add* **and then by West Bengal Land Reforms (Second Amendment) Act 1969.**

At Page 93 : After the words *this section has been added by Sec. 3 of W. B. Land Reforms (Amendment) Act 1968 published in Gazette of India Extra-ordinary Part II dated March, 26 of 1968* in the second paragraph after **Notes** please add **and then by West Bengal Land Reforms (Second Amendment) Act 1969.**

At Page 101 and 103 : after both the footnotes respectively add **and then by W. B. Land Reforms Second Amendment Act, 1969.**

At Page 137 : in Sec. 21A whenever the words West Bengal Land Reforms Ordinance occur please read

"W. B. Land Reforms (Amendment) Act, 1969 (Act XI of 1969)"

At Page 137-138 : after the words *Inserted by West Bengal Land Reforms (Amendment) Ordinance, 1969 and promulgamated by the Governor of West Bengal on the 7th day of April 1969* add, **and then inserted by West Bengal Land Reforms (Amendment) Act, 1969, Act XI of 1969 published in Calcutta Gazette dated 4th August 1969.**

At Page 142 : after the first paragraph and immediately before Sec. 24-32 (omitted by W. B. L. R. (Amendment)(Act, 1965 read the following :—

23B *Re-assessment of revenue and exemption from revenue of small holdings.*— (*1*) Notwithstanding anything contained in this Chapter,—

(*a*) where the total area of the holding or holdings held by a *raiyat* or where there are any other *raiyat* or *raiyats* among the members of the family to which the *raiyat* belongs, the total area of the holdings held by all the *raiyats* who are members of such family does not exceed 1.2141 hectares, the *raiyat* shall be exempted from paying revenue in respect of his holding or holdings :

Provided that such exemption shall not affect the liability of the *raiyat* to pay any cess imposed on him under the Cess Act, 1810, or the Bengal (Rural) Primary Education Act, 1930, or any other

law for the time being in force on the basis of the present revenue of his holding or holdings ;

(*b*) where the total area of the holding or holdings held by a *raiyat* or where there are any other *raiyat* or *raiyats* among the members of the family to which the *raiyat* belongs, the total area of the holdings held by all the *raiyats* who are members of such family—

(*i*) exceeds 1.2141 hectares but does not exceed 2.8328 hectares, the revenue payable by the *raiyat* in respect of his holding or holdings shall be the same as the present revenue of such holding or holdings ; or

(*ii*) exceeds 2.8328 hectares but does not exceed 4.0468 hectares, the revenue payable by the *raiyat* in respect of his holding or holdings shall be 1.25 times the present revenue of such holding or holdings ; or

(*iii*) exceeds 4.0468 hectares but does not exceed 6.0703 hectares, the revenue payable by the *raiyat* in respect of his holding or holdings shall be twice the present revenue of such holding or holdings ; or

(*iv*) exceeds 6.0703 hectares but does not exceed 8.0937 hectares, the revenue payable by the *raiyat* in respect of his holding or holdings shall be three times the present revenue of such holding or holdings ; or

(v) exceeds 8.0937 hectares, the revenue payable by the *raiyat* in respect of his holding or holdings shall be four times the present revenue of such holding or holdings :

Provided that in no case shall the rate of revenue payable by a *raiyat* be less than Rs. 4 for every .4047 hectare or more than Rs. 20 for every ·4047 hectare.

(*2*) Every *raiyat* shall submit a return in such form and manner and within such time as may be prescribed, stating—

(*a*) the area and such other particulars as may be prescribed of the holding or holdings of which he is the owner or part-owner, and

(*b*) the names and address of other members of his family and his relationship with them.

(*3*) Any *raiyat* who wilfully makes any omission or incorrect statement in the return furnished by him under sub-section (*2*) or fails without any reasonable cause to submit such return within the prescribed time, shall, on the complaint of the Revenue Officer, be liable to a fine which may extend to one thousand rupees or in default to simple imprisonment which may extend to three months.

(4) The provisions of sub-section (1) shall take effect from the 1st day of *Baisakh*, 1376 B.S., but until an order is made by the Revenue Officer, after making such inquiry as may be prescribed, in respect of any

holding either granting it exemption under clause (*a*) of sub-section (*1*) or, as the case may be, determining the amount of revenue payable for it under clause (*b*) of that sub-section, the *raiyat* shall continue to pay the present revenue in respect of such holding :

Provided that upon the order of the Revenue Officer being made, any amount paid in excess by the *raiyat* shall be refunded to him and any deficiency shall be recovered from him as an arrear of revenue which shall not carry any interest.

*Explanation.*--For the purposes of this section,—

(*1*) "family" includes husband, wife, son, unmarried daughter, son's wife, son's son, and son's unmarried daughter :

Provided that if the Revenue Officer is satisfied that any such person has formally severed his or her ties with the family and has no present or future interest in any property owned by any other member of the family, such person shall not be deemed to be a member of the family ;

(*2*) "present revenue", in relation to any holding, means the revenue payable by a *raiyat* in respect of such holding immediately before the commencement of the West Bengal Land Reforms (Second Amendment) Act, 1969.

At Page 231 : In the heading for

West Bengal Ordinance No III of 1969
WEST BENGAL LAND REFORMS
(AMENDMENT) ORDINANCE, 1969

read

West Bengal Act XI of 1969
WEST BENGAL LAND REFORMS
(AMENDMENT) ACT, 1969

In the short title for *Ordinance* read **Act**

In the Footnote for *ordinance* read **Act.**

At Page 232 : Whenever the word *Ordinance* occurs please read **Act.** And add after the first paragraph :

3. *Repeal and savings.*—(*1*) The West Bengal Land Reforms (Amendment) Ordinance, 1969, is hereby repealed.

(*2*) Anything done or any action taken under the West Bengal Land Reforms Act, 1955, as amended by the West Bengal Land Reforms (Amendment) Ordinance, 1969, shall be deemed to have been validly done or taken under the said Act as amended by this Act as if this Act had commenced on the 7th day of April, 1969.

Substitute the heading by the following

At Page 233

## West Bengal Act XV of 1969

### THE WEST BENGAL ACQUISITION AND SETTLEMENT OF HOMESTEAD LAND ACT, 1969.

[*Passed by the West Bengal Legislature.*]

[Assent of the President was first published in the *Calcutta Gazette Extraordinary*, of the 11th August, 1969.]

Whenever the word "Ordinance" occurs please read "Act"

At Page 235 to 238, 241 : Whenever the word 'Ordinance' occurs please read Act

At Page 241 : add the following at the end of Sec. 15

16. *Repeal and savings.* (1) The West Bengal Acquisition and Settlement of Homestead Land Ordinance, 1969, is hereby repealed.

(2) Anything done or any action taken under the West Bengal Acquisition and Settlement of Homestead Land Ordinance, 1969, shall be deemed to have been validly done or taken under this Act as if this Act had commenced on the 22nd day of May, 1969.

At Page 242 : Substitute the heading for the following :—

## West Bengal Act XVI of 1969

## THE WEST BENGAL UTILISATION OF LAND FOR PRODUCTION OF FOOD CROPS ACT, 1969.

[*Passed by the West Bengal Legislature.*]

[Assent of the President was first published in the *Calcutta Gazette, Extraordinary,* of the 11th August, 1969. ]

*An Act to provide for the requisitioning of land with a view to better utilisation thereof for the production of food crops for meeting the storage of food grains in West Bengal.*

At Page 242 to 246 : Whenever the word *Ordinance* occurs please read **Act**

At Page 246 : after Sec. 12 please add

13. *Repeal and savings.*—(*1*) The West Bengal Utilisation of Land for Production of Food Crops Ordinance, 1969, is hereby repealed.

(*2*) Anything done or any action taken under the West Bengal Utilisation of Land for Production of Food Crops Ordinance, 1969, shall be deemed to have been validly done or taken under this Act as if this Act had commenced on the 3rd day of June, 1969.