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Land System & Land Law

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THE WEST BENGAL LAND REFORMS ACT, 1955

Land reform is a concept of independent India.Land reforms includes regulation of ownership, operation, leasing, sales, and inheritance of land In any country, the basis of all economic activity is the land. Estate Acquisition Act was enacted in 1953 abolishing zamindari system. Then it wasnecessary to consider the matter of ceiling on holdings, distribute vested land amongst the landless to resolve the issues the West Bengal Government in 1955 enacted Land Reforms Act.

Important definitions : Section 2 Definitions sub section (2) "bargadar" means a personwho 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 cultivates theland of another person on condition of receiving a share of the produce of such land from thatpersonbut does not include a person who is related to the owner of the land as —

(a) wife, or

(b) husband, or

(c) child, or

(d) grand child, or

(e) parent, or

(f) grand parent, or

(g) brother, or

(h) sister, or

(i) brother's son or brother's daughter, or

(j) sister's son or sister's daughter, or

(k) daughter's husband, or

(l) son's wife, or

(m) wife's brother or wife's sister, or

(n) brother's wife].

Sademan Sk vs State of West Bengal & ors, 2014, the court interpreted the term bargadar, Section 2 sub-section 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 and includes a person who under the systemgenerally known as kisani (or by any other description) cultivates the land of another person on condition of receiving a share of the produce of such land from that person."

(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;

(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 :

Sec 2 sub section (10) "raiyat" means a person or an institution holding land for any purpose whatsoever;

Section 3A provides for the Rights of non-agricultural tenants and under-tenants in non-agri-cultural land to vest in the State (1) The rights of all non-agricultural tenants and under-tenants under the West Bengal Non-Agricultural Tenancy Act, 1949 shall vest in the State free from all incumbrances and the provisions of sections 4, 5 and 5A of Chapter II of the West Bengal Estates Acquisition Act, 1953 shall, with such modification as may be necessary, apply mutatis mutandis to non-agricultural tenants and undertenants within the meaning of the West Bengal Non-Agricul-tural Tenancy Act, 1949 as if such non-agricultural tenants and under-tenants were intermediaries and the land held by them were estates and a person holding under a non-agricultural tenant or under-tenant were a raiyat. (2) On the vesting of the estates and rights of intermediaries in any non-agricultural land under sub-section (1), the provisions of Chapter IIB of this Act shall apply.

(3) Every intermediary whose estates or interests have vested in the State under sub-section (1), shall be entitled to receive an amount to be determined in accordance with the provisions of section 14V of this Act.".

Section 4 Rights of raiyat in respect of land, 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.

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 pay- ment of such fees as may be prescribed.If any raiyat commits a breach of the provisions of sub- section (2A), 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 two thousand rupees, and where the breach is a continuing one, a further fine not exceeding two hundred rupees for each day] during which the breach continues. Such fine, if not duly paid, shall be recoverable as a public demand.

The holding of a raiyat, excluding his homestead, shall vest in the State free from all incumbrances under an order of the prescribed authority made 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 substan-tial part thereof for any purpose other .

(b) he has without any reasonable cause ceased to keep the land or any substantial part thereof under personal cultivation. or has failed to utilise the land consistently with the original purpose of the tenancy or for any purpose directly incidental thereto] 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. or has failed to utilise the land consistently with the original purpose of the tenancy or for any purpose directly incidental thereto] within three consecutive years of the date on which this Act comes into force or of 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 : On the holding of a raiyat being sold as aforesaid, his ownership therein shall cease and the rights 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.".

Section 4C Permission for change of area, character or use of land : A raiyat holding any land may apply to the Collector for change of area or character of such land or for conversion of the same for any purpose other than the purpose for which it was settled or was being previously used or for alteration in the mode of use of such land. On receipt of such applica-tion, the Collector may, after making such inquiry as may be prescribed and after giving the applicant or the persons interested in such land or affected in any way an opportunity of being heard, by order in writing either reject the application or direct such change, conversion or alter-ation, as the case may be, on such terms and conditions as may be prescribed. A copy of the order passed by the Collector directing change, conversion or alteration, if any, under sub-section (2), or in an appeal therefrom shall be forwarded to the Revenue Officer referred to in section 50 or section 51, as the case may be, and such Revenue Officer shall incorporate in the record-of-rights changes effected by such order and revise the record-of-rights in accordance with such order. If the Collector is satisfied that any land is being converted for any purpose other than the purpose for which it was settled or was being previously held, or attempts are being made to effect alter-ation in the mode of use of such land or change of the area or character of such land, he may, by order, restrain the raiyat from such act.

Section 4D says that any converstion, alteration done in vaiolation of sec 4C it is an Offences and punishable with imprisonment for a term which may extend for three years or with fine of fiftythousand rupees.

Sec 5 provides for the transferability of the plot of land , in case of transfer the transfer should be made through registered instrument and shall mention the following particulars:

- the sale price or where there is no price mentioned the value of the plot or portion of land
- a notice and prescribed fees
- purpose of transfer to be mentioned
- the purose consistent with the transfer of land

Sri Jagannath Dhali & Ors vs Sri Ram Chandra Mandal & Ors on 20 November,2009, the right of pre-emption under section8 of the WestBengal Land Reforms Act, 1955, aris-ing out of the same act or transaction. If they had filed separate applications under section 8 of the West Bengal Land Reforms Act, 1955 common questions of law and fact would have arisen.

Sec 7 puts some limitation on mortgage of rayati plot of land :

(1) A mortgage by a raiyat of his holding or any shalre thereof other than —

(a) a simple mortgage, or (b) a usufructuary mortgage for a period not exceeding fifteen years, 3[or]. 4(c) a mortgage by deposit of title deeds in favour of —

(i) a scheduled bank as defined in the Reserve Bank of India Act, 1934, or

(ii) a co-operative land mortgage bank registered or deemed to be registered under any law for the time being in force, or

(iii) a public financial institution referred to in section 4A of the Companies Act, 1956, or

(iv) a corporation owned or controlled by the Central government or the State Government or by both the Central Government and the State Government, or

(v) the International Finance Corporation established under the Agreement as defined in clause (a)of section 2 of the International Finance Corporation or

(vi) such other financifeal institution, shall be void.

Sec 8 deals with the rule of preemption and provides for the rights of purchase by co-sharer or contiguous tenants. According to this section, (1) If a portion or share is transferred to any per-son. bargadar in the plot of land may, within three months of the date of such transfer, orco-sharerof a riayat in the plot of land may, within three months of the service of the notice given under sub-section (5) of section 5, or any raiyat possessing land. may, within four months of the date of suchtransfer, apply to the Revenue Officer specially empowered by the State Government in this behalfby W.B. Act 12 of 1972 for transfer of the said portion or share of the plot of land to him, on deposit of the consideration money together with a further sum of ten per cent, of that amount.

Nothing in this section shall apply to

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

(b) a transfer by bequest or gift,

(c) "usufructuary mortgage mentioned in section 7, or

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

Mst. Moslema Bibi vs Mst. Aleya Bibi , 2015, The short question that arises for determi-nation is whether the period of limitation for filing a pre-emption application under Section8 ofthe said Act by a co-sharer on whom no notice of transfer has been served is three years or someother period of time.In that case, the Hon'ble Division Bench decided that Section 5 of the Limi- tation Act does not apply to an application for pre-emption under Section8 of the West BengalLand Reforms Act, 1955.

Sec 9 after deposit of the prescribed consideration money under subsec(1) of section 8 therevenue officer shall give notice of the application to the transferee, and shall also cause a noticeto 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 andprove 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 thedate of transfer, and rent or revenue, cesses or taxes for any period. Munsif may after such enquiryas 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 consideration money together with such other sums as are proved to have been paid by thetransferee or the person interested plus ten per cent, of the consideration money be paid to the transferee or the person interested out of the money in deposit, the remainder, if any, being re- funded to the applicant. Munsif shall then make a further order that the portion or the share of theplot of land be transferred to the applicant and on such order being made, the portion or share ofthe plot of land shall vest in the applicant.

Section 14B Restrictions on alienation of land by Scheduled Tribes. Save as provided in sec-tion 14C, any transfer by a raiyat belonging to a Scheduled Tribe of his plot of land or part thereofshall be void.

Sec 14C deals with the Modes of transfer of land by Scheduled Tribes it says that a raiyatbelonging to a Scheduled Tribe may transfer his plot of land or part thereof in any one of thefollowing ways, namely :

(a) by a complete usufructuary mortgage entered into with a person belonging to a Scheduled Tribe 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;

(cc) by simple mortgage or mortgage by deposit of title deeds in favour of a scheduled bank, a co-operative land mortgage bank or a corporation, owned or controlled by the Central or 'StateGovernment, or by both, for the development of land or improvement of agricultural production;

(d) by gift or will to a person belonging to the same Scheudled 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 sale or exchange in favour of any person belonging to a Scheduled Tribe: Provided that any such raiyat may, with the previous permission, in writing, of the Revenue Officer, transfer by sale his [plot of land] or any part thereof to a person not belonging to any Scheduled Tribe:

Provided further that no such permission shall be granted by the Revenue Officer unless he is satisfied that no purchaser belonging to a Scheduled Tribe is willing to pay the fair market price of the [plot of land] or any part thereof and that the proposed sale is intended to be made for one or more of the following purposes, namely:

(a) for the improvement of any other part of the [plot of land], or

(b) for investment, or

(c) for such other purposes 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.

CELLING ON LAND HELD BY A RAIYAT

IMPORTANT DEFINITIONS :

Section 14K Definitions : Section 14 K of this chapter deals with the following important defnitions :

(a) "ceiling area" means the extent of land which a raiyat shall be entitled to own;

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

(c) "family", in relation to a raiyat, shall be deemed to consist of

(i) himself and his wife, minor sons, unmarried daughters, if any,

(ii) his unmarried adult son, if any, who does not hold any land as a raiyat,

(iii) his married adult son, if any, where neither such adult son nor the wife nor any minor son or unmarried daughter of such adult son holds any land as a raiyat,

(iv) widow of his predeceased son, if any, where neither such widow nor any minor son or unmarried daughter of such widow holds any land as a raiyat,

(v) minor son or unmarried daughter, if any, of his predeceased son, where the widow of such predeceased son is dead and any minor son or unmarried daughter of such predeceased son does not hold any land as a raiyat, but shall not include any other person.

(d) "irrigated area" means an area specified as such by the State Government, by notification in the Official Gazette, being an area which is, or is in the opinion of the State Government capable of being, irrigated, at any time during the agricultural year commencing on the 1st day of Baisakh, 1377 B.S. 3030. Words and brackets subs, for the words and brackets ", froiti any State

canal irrigation project or State (power driven deep tubewell) irrigation project" by W. B. Act 33 of1974. [or thereafter, from any State canal irrigation project of 31 (State power-driven deep tubewellor shallow tubewell or any other State irrigation project) or State river-life irrigation project.

(f) "standard hectare" means,

(i) in relation to an agricultural land, an extent of land equivalent to

(a) 1.00 hectare in an irrigated area,

(b) 1.40 hectare in any other area;

(ii) in relation to any land comprised in an orchard, an extent of land equivalent to 1.40 hectare;

Section 14L No raiyat to hold land in excess of the ceiling area under section 14M

Sec 14 M : (1) The ceiling area shall be: (a) in the case of a raiyat, who is an adult unmarried person, 2.50 standard hectares;

(b) in the case of a raiyat, who is the sole surviving member of a family, 2.50 standard hectares;

(c) in the case of a raiyat having a family consisting of two or more, but not more than five members, 5.00 standard hectares;

(d) in the case of a raiyat having a family consisting of more than five members, 5.00 standard hectares, plus 0.50 standard hectare for each member in excess of five, to, however, that theaggregate of the ceiling area for such raiyat shall not, in any case, exceed 7.00 standard hectares;

(e) in the case of any other raiyat, 7.00 standard hectares.

(2) Notwithstanding anything contained in sub-section (1), where, in the family of a raiyat, there are more raiyats than one, the ceiling area for the raiyat, together with the ceiling area of all the other raiyats in the family shall not, in any case, exceed,

(a) where the number of members of such family does not exceed five, 5.00 standard hectares;

(b) where such number exceeds five, 5.00 standard hectares, plus 0.50 standard hectare for each member in excess of five, so, however, that the aggregate of the ceiling area shall not, in anycase, exceed 7.00 standard hectares.

Sec 14 O provides for appeal. Any person who is aggrieved by any determination made by the prescribed authority under section 14N may, within thirty days from the date of such determina- tion or within such further time as the appellate authority may, on sufficient cause being shown, allow, prefer an appeal to such authority as the State Government may, by notification in the Official Gazette, specify in this behalf, against such determination.

(2) On receipt of such appeal, the appellate authority may, after giving a reasonable opportu- nity to the appellant of being heard, confirm, modify or reverse the determination made by the prescribed authority.

Sec 14 Q : Ceiling area in special cases

(1) Subject to the provisions of sub-section (2), the ceiling area for a co-operative society, company, co-operative farming society, Hindu undivided family or a firm, as the case may be, shall not exceed the sum total of the ceiling areas of each member of such co-operative society, company, co-operative farming society, Hindu undivided family or each partner of such firm: Provided that for the purpose of determining the ceiling area referred to in this sub-section, any land held separately by a person, who is a member of a co-operative society, company, co-opera- tive farming society or Hindu undivided family or a partner of a firm, shall be deducted from the ceiling area referred to in section 14M, so that the sum total of the area of land held by suchperson, whether as such member or partner or individually or as a member or a family, may not,

in any case, exceed the ceiling area applicable to him under section 14M. 4242. Sub-sec. (2A)first ins. by W.B. Act 33 of 1974, then sub-sees. (2) and (2A) om. by W.B. Act 50 of 1981. Sub-sec. (2) was as under: "(2) Where a raiyat owns land comprised in orchards, whether or not in addition to other land, the celling area in relation to such raiyat shall be increased by 2.00 standardhectares or the actual area of the land comprised in orchards, whichever is the lesser.".

Sec 14 S : Vesting of land in excess of ceiling area

(1) On the commencement of the provisions of this Chapter or on any subsequent date], any land owned by a raiyat in excess of the ceiling area applicable to him shall vest in the State free from all encumbrances.

(2) Where any land vested in the State under sub-section (1) is being cultivated by a bargadar, the right of cultivation of such bargadar in relation to any such vested land which, including any other land owned or cultivated by him is in excess of [0.4047 hectare of land used for agriculture] shall, on the commencement of the provisions of this Chapter 5151. Words ins. by W.B. Act 35 of 1986. [or on any subsequent date] stand terminated.

(3) Every bargadar shall, in relation to the land which he is authorised by sub-section (2) to retain under his cultivation, become, on and from the date of commencement of the provisions ofthis Chapter. Words ins. by W.B. Act 35 of 1986. [or on any subsequent date], a raiyat.

Sec 14SS : (1) Upon vesting of any land in the State under any of the provisions of this Act, the Revenue Officer or the prescribed authority or any other officer or authority who makes the orderof vesting shall enter upon and take possession of such vested land by using such force as may benecessary for this purpose.

(2) Any Revenue Officer, prescribed authority or any other officer or authority empowered in this behalf, may enter upon and take possession of any other vested land by using such force as may be necessary for this purpose.

(3) For the purpose of entering upon such land and taking possession thereof, any such officeror authority may send a written requisition in such form and in such manner as may be prescribedto the officer-in-charge

Sec 14 T : Duty of raiyat to furnish return, every raiyat owning land in excess of the ceiling area shall furnish to the Revenue Officer, in such form and within such time as may be prescribed,a return containing the full description of the land which he proposes to retain within the ceiling area applicable to him under section 14M and a full description of the land which is in excess of the ceiling area and such other particulars as may be prescribed.Where there are more raiyatsthan one in a family, the return referred to in sub-section (1) shall be furnished by the head of the family or any other raiyat in accordance with the provisions of that sub-section.The RevenueOfficer may, on receipt of a return submitted under sub-section (1) or sub-section (2), or on his own motion, determine the extent of land which is to vest in the State under section 14S and take possession of such lands: 86Provided that where a raiyat has exercised his choice of retention of land within the ceiling area in such a way that portions of more than one plot are to vest in theState, the Revenue Officer may disregard the choice exercised by the raiyat and may, after givingthe raiyat an opportunity of being heard, determine the plot or, where necessary, plots of land proposed to be retained by the raiyat from which an area equal to the area of the portions of theplots shown in the return to be in excess of the ceiling area, is to vest in the State and take possession of such land.

Sec 14 U : Restriction on transfer of land by a raiyat. Except where he is permitted, in writing, by the Revenue Officer so to do a raiyat owning land in excess of the ceiling area applicable tohim under section 14M transfer, by sale, gift or otherwise or make any partition of any land owned by him or any part thereof until the excess land, which is to vest in the State under section 14S,has been determined and taken possession of by or on behalf of the State.

BARGADAR

Sec 15 : Certain safeguards for [plots of land] cultivated by bargadars. The right of cultivation of land by bargadar shall, subject to the provisions of this Chapter, be heritable and shall not be transferable.

Sec 15A : (1) Notwithstanding anything contained in any law for the time being in force or in any contract to the contrary, where a bargadar, cultivating any land, dies at a time when cultiva-tion of such land by the bargadar was continuing, the cultivation of such land may be continued by the lawful heir of the bargadar or where there are more than one lawful heir, by such lawful heir of the bargadar as all the lawful heirs of the bargadar may determine within the prescribed period:

Provided that where the lawful heirs of the bargadar omit or fail to make a determination as required by this sub-section, the officer or authority appointed under sub-section (1) of section 18 may nominate one of the lawful heirs of the bargadar, who is in a position to cultivate the land personally, to continue the cultivation thereof.

(2) The lawful heir of the bargadar who is determined or nominated for the cultivation of the land shall cultivate the land subject to such terms and conditions as may be prescribed.

(3) Where (a) no lawful heir of the bargadar is in a position to cultivate the land personally, or (b) the lawful heirs of the baradar fail to determine, within the prescribed period, the heir by whom the cultivation of the land will be continued and the officer or authority appointed under subsec- tion (1) of section 18 also omits or fails to nominate, within the prescribed period, any lawful heir of the deceased bargadar for the continuation of the cultivation of the land, or

(c) the person determined or nominated under sub-section (1) omits or fails to take any steps, within the prescribed period, for the continuation of the cultivation of the land,

Sec 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 8686. Figures subs. for the figures "60:40" by W.B. Act 12 of 1972. [75:25] in all other cases.

8787. Sub-sees. (2) to (7) subs. for original sub-sees. (2) and (3) by W.B. Act 12 of 1972, which were as under: "(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.". (2) The bargadar shall tender, within the prescribed period, to the person whose land he cultivates, the share of the produce due to such person.

8787. Sub-sees. (2) to (7) subs. for original sub-sees. (2) and (3) by W.B. Act 12 of 1972, which were as under: "(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.". (3) Where any share of produce tendered under sub-section (2) is accepted by the person

whose land is cultivated by the bargadar, each party shall give to the other a receipt, in such formas may be prescribed, for the quantity of the produce received by him.

8787. Sub-sees. (2) to (7) subs. for original sub-sees. (2) and (3) by W.B. Act 12 of 1972,which were as under: "(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 shallgive to the other a receipt for the quantity of the produce received by him. (3) The bargadar shallstore or thresh the produce at such place as may be agreed upon by him and the owner of theland.". (4) If the person whose land is cultivated by the bargadar refuses to accept the share of theproduce tendered to him by the bargadar, or to give a receipt therefor, the bargadar may deposit,within the prescribed period, such share of the produce with such officer or authority as may be prescribed and such deposit shall discharge the bargadar from his obligation to deliver the share of the produce to the person whose land he cultivates :

Provided that where the quantity of the produce deposited by the bargadar is lesser than the quantity of the produce due to the person whose land he cultivates, the obligation of the bargadar with regard to the delivery of the deficiency in relation to the produce shall continue.

8787. Sub-sees. (2) to (7) subs. for original sub-sees. (2) and (3) by W.B. Act 12 of 1972,which were as under: "(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 shallgive to the other a receipt for the quantity of the produce received by him. (3) The bargadar shallstore or thresh the produce at such place as may be agreed upon by him and the owner of theland.". (5)Where a deposit referred to in sub-section (4) has been made, the prescribed officer orauthority shall

(a) give to the bargadar a receipt in such form as may be prescribed stating therein the quantityof the produce deposited by the bargadar and the particulars of the person for whom the producehas been deposited; and

(b) give intimation of such deposit, in such form and in such manner as may be prescribed, to the person for whom the produce has been deposited.

8888. Sub-sees. (2) to (7) with proviso subs. for original sub-sees. (2) and (3) by W.B. Act 12of 1972. (6) Where any produce is deposited under sub-section (4) and the person for whom theproduce has been deposited does not take delivery of such produce within fifteen days from the date of service on him of the intimation of such deposit, the officer or authority referred to in sub-section (4) may sell such produce and deposit the proceeds of such sale, after deducting therefromthe cost of conducting the sale, in the treasury, in revenue deposit, to the credit of the person forwhom the produce has been deposited and give intimation of such deposit to such person, in suchfrom and in such manner as may be prescribed.

(7) The bargadar shall store or thresh the produce

(a) at such place as may be agreed upon between him and the person whose land he cultivates, or

(b) where there is disagreement between them, at such place as may be fixed by him after giving notice, in writing, served in the prescribed manner, to the person whose land he cultivates:

Provided that the person whose land is cultivated by the bargadar may, at any time during thestorage or threshing of the produce, enter the place where the produce has been stored or is being threshed for the purpose of inspecting the storage or threshing, as the case may be, of the produce.

Section 16A Bargadar entitled to recover his share in certain cases 8989. Sec. 16A ins. by W.B. Act 23 of 1969. 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.

Sec 17 Section 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, 9090. Words "or has neglected to cultivate it properly" om. by W.B. Act 12 of 1972. * * * * * other than agriculture;

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

9191. Clause (c) subs. by W.B. Act 12 of 1972, which was earlier as under: "(c) that the bargadar ha contravened any provisions of this Act;". (c) that the bargadar has failed to tender or deposit to the full extent the share of the produce as required by sub-section (2) or subsection (4), as the case may be, of section 16: Provided that no order for the termination of cultivation, made on the ground specified in this clause, shall be given effect to if the bargadar delivers to the person, whose land he cultivates, the share of the produce due to such person, or pays to him the market price thereof, within such time and in such instalments as the officer or authority making the ordermay, having regard to all the circumstances of the case, specify in this behalf.

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

9292. Provisos and 'Expln.' subs. for original proviso and Expln. by W.B. Act 12 of 1972. Previous proviso and Expln. were as under: "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. Explana-tion. 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.". Provided that the person owning the land shall be entitled to terminate cultivation by a bargadar of only so much of land as, together with any other land in the personal cultivation of such person, does not exceed 3.00 hectares :

Sec 19A : Section 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 2121. Words ins. by W.B. Act 34 of 1977. [or attempts to terminate] 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.

2222. Sub-sec. (2A) ins. by W.B. Act 34 of 1977. (2A) Any person who fails to give a receipt in contravention of the provisions of sub-section (3) of section 16 for the share of the produce ac- cepted by him 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.

2323. Sec. 19A renumbered as sub-sec. (1) of that sec. and sub-sees. (2) and (3) ins. by W.B. Act 11 of 1966. (3) An offence under subjection (2) 2424. Words, figure, letter and brackets ins. by W.B. Act 34 of 1977. [or under sub-section (2A)] shall be cognizable and bailable.

Sec 19B : Section 19B Restoration of land to bargadar: (1) If a person owning any land termi-nates or causes to be terminated the cultivation of the land by a bargadar in contravention of theprovisions of this Act, then any officer specially empowered by the State Government in this behalf, shall, on an 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 orby 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 StateGovernment 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 [person other than the bargadar] engaged by the owner, that the land be restored at the end of the cultivation season to the appli-cant and further that the [person other than the bargadar] [shall retain twenty-five per cent.} of thecrops harvested before restoration and make over the [remaining seventy-five per cent.} of suchcrops to the applicant: Provided that nothing in this section shall apply to termination of cultiva- tion by a bargadar if the termination occurred before the 4th day of August, 1970, namely, thedate with effect from which the West Bengal Land Reforms (Amendment) Act, 1969 ceased to bein force :

Provided further that an application under sub-section (1) shall be made within two years fromthe date of termination of cultivation by the bargadar or two years from the date of commence- ment of the West Bengal Land Reforms (Amendment) Act, 1980, whichever is later:

REVENIUE

Sec 22 : Liability to pay revenue

(1) A raiyat shall be liable to pay revenue for his plot of land.

(2) Revenue shall be a first charge on land held by the raiyat.

Sec 23A : Section 24 Exemption of revenue and payment of chess and surcharge

(1) Notwithstanding anything contained in this Chapter, (a) where the Revenue Officer on his own motion or on an application made by a raiyat makes an order that the total area of land heldby a raiyat and his family does not exceed 2.428 hectares, the raiyat and his family shall be exempted from paying revenue with effect from the 1st day of Baisakh, 1385 B.S. :

Provided that such exemption shall not affect the liability of the raiyat to pay any cess imposedon him under the Cess Act, 1880, or the West Bengal Primary Education Act, 1973, or the West Bengal Rural Employment and Production Act, 1976, or any other law for the time being in force,on the basis of the revenue of his land determined under section 23 :

Provided further that no exemption shall be made in respect of any land which lies within

(a) any area within the local limits of a Municipality, or

(b) any area constituted by the State Government as a notified area under section 378 of the West Bengal Municipal Act, 1993, or

(c) any area in a newly-developing locality as the State Government may, by notification in the Official Gazette, specify, or

(d) any area within an urban agglomeration as defined in clause (n) of section 2 of the Urban Land (Ceiling and Regulation) Act, 1976, or

(e) any area which is used for mill, factory, workshop or other commercial purposes;

(f) where the land held by a raiyat and his family is situated in both irrigated and non-irrigated areas, then, for the purposes of calculating the total area of land of the raiyat and his family, one

hectare of land in irrigated area shall be deemed to be equivalent to 1.5 hectares of land in non-irrigated area;

(g) if any amount already paid by a raiyat is in excess of the revenue payable by him under this section, the amount paid in excess shall be refunded to him, but if there is any deficiency in suchpayment, such deficiency shall be recovered from him as an arrear of revenue under the Bengal Public Demands Recovery Act, 1913, without any claim for interest being made on such defi-ciency.

Explanation. For the purposes of this section, (i) "family", in relation to a raiyat, shall be deemedto consist of himself, his wife, minor sons and unmarried daughters, if any, and (ii) "irrigated area"shall have the same meaning as in clause (d) of section 14K.

(2) Any person aggrieved by an order made by the Revenue Officer under clause (a) of sub-section (1) may, within thirty days from the date of such order or within such further time as suchauthority may, on sufficient causes being shown, allow, prefer an appeal to such authority as theState Government may, by notification in the Official Gazette, specify.

Section 25 Grounds for alteration of revenue

The revenue payable by a raiyat may, in the manner to be prescribed, be altered by the Rev- enue Offker, if the land held by the raiyat and his family has increased or decreased in area by diluvion, amalgamation, purchase, partition, subdivision, acquisition or any other cause whatso- ever subsequent to the determination of revenue.

Section 26 Bar to jurisdiction of Civil Court

No suit or other legal proceedings shall be instituted in any Civil Court in respect of the determi-nation of any revenue or the omission to determine any revenue under this Chapter.

CONSOLIDATION

Under sec 39. The State Government may — 1. on the representation of raiyats in any area, or 2. on its own motion,

Acquired the lands in any area as may be necessaryon payment of compensation to the raiyatsowning them when the lands comprised in the holdings of the raiyats in such area are not incompact blocks, if the State Government is of the opinion that the lands comprised2[in the hold-ings in such area should be consolidated. Sec 40 says On such acquisition being made, the State Government shall re-arrange the holdings so that the lands comprised in each is in a compactblock 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 for as possible, lands of the same quality and value as before the consolidation. sec 41 says 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 allotted to Sec:

42. 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 instalmentsas may be prescribed and it 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 toaccept settlement of the land allotted to him.

PRINCIPLE OF DISTRIBUTION OF LANDS

What is the procedure for distribution of land Under W.B.L.R Act 1955 ?

49. : Settlement of any land which is at the disposal of the State Government, shall be made without any premium being charged for it, in such manner as may be prescribed., with persons

who are residents of the locality where the land is situated, and who together with other mem-bers of their family, own no land or less than 1[0.4047 hectare of land used for the purpose ofagriculture], one half of the lands cultivated by them as bargadars being taken into account for the purpose of calculating the aggregate of such land, and subject to the following conditions, namely:-

(1) that, in the case of agricultural land, such person intends to bring the land under personal cultivation. (2) that, in the case of homestead land, such person having no homestead of his own,intends to construct a dwelling house thereon, and (3) Such other terms and conditions as may beprescribed :

Provided that among the persons eligible for such settlement, preference shall be given to persons belonging to Scheduled Caste or Scheduled Tribe or who form themselves into a Co- operative Society for the purpose :

3(1A) No person with who any land is or has been settled under sub-section (1) shall be entitled to transfer such land except by way of a simple mortgage or a mortgage by deposit of titledeeds in favour of a Scheduled Bank, or a Co-operative Society or a Corporation owned or controlled by the Central or State Government or both, and for the purpose of obtaining loan for the development of land or for the improvement of agricultural production or for the constructionof a dwelling house.

4(2) If a Revenue Officer, on his own motion or on application made to him in that behalf, afterhearing the person with whom the land was settled and in the case of any subsequent transfer, thetransferee as also the person who is, for the time being, in actual occupation of such land and aftermaking such enquiry as may be prescribed, is satisfied that settlement of such land 1 [was made by mistake or obtained under any provision of this section by practice of fraud, misrepresenta- tion, correction or otherwise,] or that a transfer of any land has been made in contravention of theprovisions of sub-section (1A), he, may , by order in writing, annual the settlement or both the settlement and the transfer, as may be deemed necessary.

2(3) When a Revenue Officer makes an order under sub-section (2) annulling settlement or both the settlement and the transfer of any land, as the case may be, the Revenue Officer shallenforce delivery of possession of such land to the Collector by using such force as may be requiredafter evicting the person in actual occupation of such land.

3(3A) For the purpose of enforcing delivery of possession of any land and evicting any person in actual occupation of such land under sub-section (3) any such Revenue Officer may send awritten requisition in such form and in such manner as may be prescribed to the officer-in-chargeof the local police station or to any police officer superior in rank to such officer-in-charge and onreceipt of such written requisition, the police officer concerned shall render all necessary andlawful assistance for enforcing delivery of possession such land.

2(4) Any person aggrieved by an order made under sub-section(2) may, within Thirty days from the date of such order, prefer an appeal to such authority as the State Government may, by notification in the Official Gazette, specify and the order passed such authority in appeal shall befinal.

4(4A) Notwithstanding anything contained in the foregoing provisions of this section, the State Government or an officer authorised in this behalf by the State Government, may transfer to, or settle with, a local body or an authority constituted or established by or under any law for the timebeing in force land which is at the disposal of the State Government, for such purpose and on such terms and conditions as may be decided by the State Government. (5) Notwithstanding anything contained elsewhere in this Act, where the State Government is satisfied that it is neces-sary so to do for a public purpose or for establishment, maintenance or preservation of any edu-

cational or research institution or industry, settlement for any period of any land may be madewith any person or institution on such terms and conditions including periodical payments, with or without any premium being charged therefor, in such manner as may be prescribed.

Section 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 into a Co-operative Farming Society and apply in writing, in the pre- scribed form, to the Registrar, Co-operative Societies, for the registration of such society under [the West Bengal Cooperative Societies Act, 1973].

(2) The Registrar may, after such enquiry as he may deem fit, register the society under [the West Bengal Co-operative Societies Act, 1973], and grant a certificate of registration and on such registration the provisions of [the West Bengal Co-operative Societies Act, 1973], subject to the special provisions of this Act, shall apply to such a society and the society may enlist new mem- bers 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, whetherowned 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 any land, excluding homestead, which together with any land belonging to him but vested in the societyunder the provisions of this sub-section [exceeds the ceiling area applicable to him under ChapterIIB].

(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 tothe value of the lands of the member vested in the society.

(5) Notwithstanding anything elsewhere contained in this Act, no Cooperative Farming Soci- ety shall have the right to acquire or hold any land except the land which vests in it under sub-section (3). * * * * *

Section 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.

Section 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.

Section 46 Transfer of lands on dissolution of a 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 landsvested 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.

Section 47 Revenue payable by a Co-operative Farming Society

When a Co-operative Farming Society is established under the provisions of this Act, the ag- gregate of the revenues which would have been payable by its members for their lands, if such

lands had not vested in the society, shall be the revenue payable by the society for the lands vestingin it, subject to such reduction as may be allowed under section 48.

Section 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 Government;

(d) financial assistance on such terms and conditions as may be prescribed;

(e) arrangements for better marketing.

Section 48A Formation of Co-operative Common Service Society 5959.

Sec. 48A ins. by W.B. Act 50 of 1981.

(1) Any seven or more persons each owning, cultivating or possessing in any capacity agricultural land not exceeding 0.4047 hectare in area in aggregate in any compact block or in different blocks may form themselves into a Cooperative Common Service Society and apply in writing, in the prescribed form, to the Registrar, Co-operative Societies, West Bengal for registration of suchsociety under the West Bengal Co-operative Societies Act, 1973.

(2) The Registrar may, after such enquiry as he may deem fit, register the society under the West Bengal Co-operative Societies Act, 1973 and grant a certificate, and on such registration the provisions of the West Bengal Co-operative Societies Act, 1973, shall, subject to the special pro- visions of this Act, apply to such a society and the society may enlist new members in accordancewith the rules and bye-laws under the said Act for the time being in force :

Provided that the society shall not enlist any person as its member who owns, cultivates orpossesses in any capacity agriculture land exceeding 6060. Word and figures subs, for the words"one hectare" by W.B. Act 35 of 1986. [0.4047 hectare] in the aggregate.

(3) Notwithstanding anything contained in the West Bengal Co-operative Societies Act, 1973 and the rules made thereunder,

(a) the Chairman of any Co-operative Common Service Society shall be nominated from amongst the elected directors of the society by the Collector having jurisdiction on receiving a written requisition from the elected directors of the society. A Chairman so nominated may be removed before expiry of the term of the managing committee of the society and a new Chairman may be nominated in his place;

(b) the first managing committee of any Co-operative Common Service Society shall hold office for a term not exceeding three years;

(c) after the expiry of the term of the first managing committee of the society, the Chairman shall be elected by the elected directors of the society.

(4) A Co-operative Common Service' Society shall raise its funds from, among other sources, the State Government, the Central Government, any bank, any insurance corporation and other financial institutions or from among its own members as grant, loan or equity. The society shall acquire by purchase, grant, gift, hiring, or otherwise plough, cattle, manure (including chemical fertilisers), seeds, modern scientific agricultural implements and such other inputs as may be nec-

essary for cultivation 6161. Words ins. by W.B. Act 35 of 1986. [and poultry farming] and supply or utilise the same among its members in proportion to the area of land held by them. The societymay advance loan to the members out of its own fund 6262. Words ins. by W.B. Act 35 of 1986. [or out of the fund raised by it].

(5) The society may recover loans, interest, service charges and any other charge for supply of implements and price or part of price of inputs supplied to the members in accordance with the bye-laws of the society specially made for this purpose.

(6) The society may undertake marketing of produces grown by its members.

MAINTENANCE OF REORD OF RIGHTS

What is the procedure for maintenance and final publication of the Record of Rights ?

50. The prescribed authority shall maintain up-to-date in the prescribed manner the village record-of-rights by incorporating therein the changes on account of(b) partition, exchange, or consolidation of lands comprised in holdings or establishment of Co-operative Farming Societies;

(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 n the mode of cultivation, for example, by a bargadar;

(f) such other causes as necessitate a change in the record-of-rights.

When a record-of-rights has been revised or prepared, the Revenue Officer shall publish a draftof 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 p8eriod to any entry therein or to any om9ission therefrom. When all such objections have been considered and dis- posed of according to such rules as the State Government may make in this behalf, the Revenue Officer shall finally prepared the record and cause such record to be finally published in the pre- scribed manner and make a certificate setting the fact of such final publication and the date thereof and shall date and subscribe the same under his name and official designation. Separate publication of different parts of draft or final records may be made under sub-section or sub-section for different local areas. An officer specially empowered by the State Government may, on application within one year, or on his own motion within three years from the date of publica- tion of the record-of-rights under sub-section revise an entry in the record finally published inaccordance with the provisions of sub-section (2) after the persons interested are given an oppor-tunity of being heard and after recording reasons therefor. 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 4[5the prescribed authority supe-rior in rank to the authority from whose order the appeal is preferred) of the district in which theland is situated.

51A. (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 pre-scribed period and shall receive and consider any objections which may be made during suchp8eriod to any entry therein or to 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 prepared the

record and cause such record to be finally published in the prescribed manner and make a certifi- cate setting the fact of such final publication and the date thereof and shall date and subscribe thesame under his name and official designation.

(3) Separate publication of different parts of draft or final records may be made under sub-section (1) or sub-section (2) for different local areas.

3(4) An officer specially empowered by the State Government may, on application within oneyear, or on his own motion within three years from the date of publication of the record-of-rightsunder sub-section)2) revise an entry in the record finally published in accordance with the provi- sions of sub-section (2) after the persons interested are given an opportunity of being heard andafter recording reasons therefor.

(5) Any person aggrieved by an order passed in revision under sub-section 4 may, within suchperiod and on payment of such court-fees as may be prescribed, appeal in the prescribed mannerto 4[5the prescribed authority superior in rank to the authority from whose order the appeal ispreferred) of the district in which the land is situated.

Section 51B Revision or correction of entry in record-of-rights

(1) Any Revenue Officer specially empowered by the State Government in this behalf may, on an application or on his own motion, at any stage of revision or preparation of the record-of-rightsunder this Chapter but before final publication of any such record-of-rights, revise or correct any entry in such record-of-rights after giving the persons interested an opportunity of being heard and after recording the reasons therefor :

Provided that any order made under this sub-section shall be appealable in accordance with the provisions of sub-section (5) of section 51A.

Section 51BB Revision or correction of entry in record-of-rights before or after final publication

An officer specially empowered in this behalf by the State Government may revise or correct any entry in any record-of-rights in respect of a mouza at any stage before or after final publica-tion of such record-of-rights under this Chapter if it is necessary, in his opinion, to do so in pursu-ance of an order under Chapter IIB or on account of any amendment made in the provisions of this Act :

Provided that no such revision or correction shall be made, except when it is necessary to do soin order to prepare a separate khatian as required under sub-section (5) of section 51 by amal- gamating the khatians in respect of a raiyat already prepared or finally published under this Chap-ter or to correct a bona fide mistake, until a notice has been given to the persons interested toappear and be heard in the matter.

Section 51C Bar to jurisdiction of Civil Court in respect of certain matters.

WEST BENGAL PREMISES TENANCY ACT 1997

Protection of Tenants Against Eviction

About 42% of the urban population of the world, which are roughly 150 million households, lives as tenant. The same holds true even in India where, due to exorbitant rates of property especially in the metro cities, a majority of people live as tenants. While living as a tenant can be really comfortable, there are times when once can face rental issues and other related problems like getting an unwarranted eviction notice. However, Indian Laws has several provisions that protect the rights of a tenant.

The right to be saved from eviction that is not justified or authorized and which is unreason-able is the most important right available to a tenant. Each of the State's in the country has their own State has laid down particular grounds in view of which a landlord can evict a tenant. Eviction of a tenant on any ground other than the ones mentioned in the State Acts is not consid-ered to be sufficient for eviction. Further, the said State Acts additionally give the tenants the privilege to assurance for a situation where the landlord powerfully evict the tenant for a reason not determined in the Act.

Landlord Filing Case For Eviction of False Grounds :

In numerous cases, it is seen that the landlord may file a notice of eviction on false grounds. For example, the landlord may evade the receipt of rent for a month and then use the same fact of willfully failing to pay rent as a ground to evict the tenant. However, in such cases also, the Rent Control Act can provide remedy to the tenant

Remedy Against False Cases :

The following steps can be taken for challenging the false eviction notice : The tenant

should approach the Rent Controller giving her/his reasons.

Once the tenant is summoned by the Court, he/she will be required to put forth her/his case with adequate evidence for support. The following points can come in handy while accumulation of evidence :

Notice to Receive Rent: If the landlord fails to receive the rent deposited by the tenant, he/she should issue a notice in writing that asks the landlord to specify a bank for depositing the rent within ten days of receiving the notice. The notice should clearly mention the non-receipt of the rent on the part of the landlord and the option that one is exercising as a tenant. If the bank details are received within ten days, the tenant should deposit the rent as soon as possible.

Money Order : If the landlord fails to reply to the above notice, the tenant must directly send the rent to the landlord via Money Order. The Money Order coupons should be kept safely as proof of payment of rent. In the landlord receives the Money Order, the tenant should continue the payment in the same mode.

Petition in Court : in the landlord refuses to accept the Money Order as well, the tenant should file a petition before the appropriate court and get the court order to deposit future rents in the court

West Bengal Premises Tenancy Bill

The State Assembly has passed on 26th November 1997 The West Bengal Premises Tenancy Bill, 1996, after its modification has passed by the Select Committee, making contracts legally binding on tenants beyond certain rent cut-offs.

As the new legislation develops out of the Bill, it will apply to residential and commercial ten- ants in equal measure. The Bill makes it easier for the landlord to evict a tenant when he needs the

premises for his own use if he does not have suitable accommodation in the same area. Otherthan this, however, eviction remains as difficult as before for landlords whose tenants are not oncontract.

CHARTER OF RENT

Eviction :

1. When the contract expires and is not renewed , tenants should vacate within a month .

2. If a tenant dies, his direct legal heirs living with him or dependent on him can stay on only for five years.

3. Landlord can evict tenant for his own accommodation. Landlord can claim immediate possession if he is a retired government employee of an ex-serviceman.

4. A tenant can be evicted if he fails to pay rent for three months in a year.

5. Subletting or immoral use of premises will invite eviction.

Charges :

- Tenants should pay maintenance and amenities charges at the rate 10 percent of the rent .
- Landlord cannot demand amounts exceeding a month's rent without the permission of the rent controller.
- If landlord cuts off any essential supply or service, he may have to pay damages of Rs.5,000 to the tenant.

Protection of Tenants Against Eviction :

If you're a landlord and want to evict a tenant, you need to have a legal reason for doing so. Inother words, you can't evict a tenant just because you don't get along with them or because they'rea little messy. And while laws are in place to keep folks in the property they're renting, there are fewcommon reasons you can evict a tenant in nearly every state.

Section 6 of the West Bengal Premises Tenancy Act, 1977 deals with the Protection of Tenants Against Eviction.

It states that - (1) Notwithstanding anything to the contrary contained in any other law for thetime being in force or in any contract, no order or decree for the recovery of the possession of any premises shall be made[by the Civil Judge having jurisdiction] in favour of the landlord against thetenant, [except on a suit being instituted by such landlord] on one or more of the following grounds:-

(a) Where the tenant has sublet, assigned or otherwise parted with the possession of whole or any part of the premises without obtaining the consent in writing of the landlord or the tenant hasused the premises for a purpose other than that for which it was let out without obtaining theconsent in writing of the landlord;

(b) Where the tenant has made default in payment of rent for three months within a period of twelve months, or for three rental periods within a period of three years where the rent is notpayable monthly;

(c) Where the premises is required by the landlord for the purpose of building or rebuilding or for making substantial addition or alteration thereto and such building or rebuilding or substantialaddition or alteration cannot be carried out without the premises being vacated;

[(d) Where the landlord or any person, for whose benefit the premises is held, reasonablyrequires the premises for his own occupation and the landlord or such person is not in possession of any suitable accommodation within the same Municipal Corporation or Municipality or in any

other area within ten kilometers from such premises where this Act extends;]

(e) Where the tenant has given notice to quit but has failed to deliver vacant possession of the premises to the landlord in accordance with such notice;

(f) Where the tenant or any person residing in the premises let out to the tenant has done anyact contrary to the provisions of clause (m), clause (o) or clause (p) of section 108 of the Transferof Property Act, 1882 (4 of 1882);]

(g) Where the tenant has been using the premises or any part thereof or allowing the premisesor any part thereof to be used for immoral or illegal purpose;

(h) Where the tenant is guilty of any act of waste or of any negligence or default resulting in material deterioration of the condition of the premises;

(i) Where the tenant or any person residing in the premises let out to the tenant has been guiltyof conduct which is a nuisance or causes annoyance to the neighbors including the landlord;

(j) Where the tenant has acquired or constructed or has been allotted, a house or flat, provideda moratorium for one year is allowed for vacating the premises; 15[Explanation.-This clause shallnot apply to premises let out for nonresidential purpose and used for commercial purpose:]

(k) Where the landlord is a member of the Armed Forces of the Union of India and requires it for occupation of his family and produces a certificate of the prescribed authority referred to inSection 7 of the Indian Soldiers (Litigation) Act, 1925 (4 of 1925), that he is serving under special conditions within the meaning of section 3 of that Act or is posted in a non-family area.

(l) Where the tenant, or his spouse, or son, or daughter, or parent, or the widow of his predeceased son, who is dependent on him, does not reside in the premises 16[ten months] and keeps the premises under lock and key.

(2) Where a landlord has acquired his interest in the premises by transfer, no 17[suit] for the recovery of possession of the premises on the ground of requirement for building or rebuilding oraddition or alteration or requirement for own occupation shall be instituted by the landlord beforethe expiration of a period of one year from the date of acquisition of such interest.

(3) Where the landlord requires the premises on the ground of building or rebuilding or addition or alteration or for his own occupation and [the Civil Judge] is of the opinion that such requirement may be substantially satisfied by ejecting the tenant or a subtenant from a part of thepremises and allowing the tenant or the sub-tenant to continue in occupation of the rest of thepremises, then, if the tenant or the sub-tenant agrees to such occupation, [the Civil Judge] shall pass a decree accordingly and fix the proportionate rent for the portion remaining in the occupa-tion of the tenant or the subtenant. The rent so fixed shall be deemed to be the fair rent for the purposes of this Act. If the tenant does not agree, but the sub-tenant agrees, to such occupation, no decree or order for ejectment shall be passed against the sub-tenant who shall become, with effect from the date of the decree or order, a tenant directly holding under the landlord.

(4) Notwithstanding anything in any other law for the time being in force, no [suit] for the recovery of possession of any premises on any of the grounds as aforesaid, except on the groundmentioned in clause (e) of sub-section (1), shall be instituted by the landlord unless he has given to the tenant one month's notice expiring with a month of the tenancy.

(5) Notwithstanding anything contained in this Act or in any other law for the time being in force, no suit or proceeding shall be instituted by the landlord within two years from the date of commencement of this Act for recovery of possession of any premises to which the provisions ofthe West Bengal Premises Tenancy Act, 1956 did apply but the provisions of this Act do not apply.

Synopsis of The Section 6 of The West Bengal Premises Tenancy Act, 1977:

1. Consent in Writing: The tenant in entitled to protection from eviction if he can prove that for creating the sub-tenancy there was a written consent of the landlord. It excludes any other con- sent, namely, oral consent or implied consent . In Shalimar Tar Products Ltd. V H.C. Sarma the Supreme Court on construing the similar provision in s. (14)(b) of the Delhi Rent Control Act 1958has held that consent must be in writing and the specific sub-letting. The Supreme Court hasmade it clear that it is necessary for the tenant to obtain consent in writing and must be in respectof the specific sub-letting.

2. Keeping Paying Guest: The Calcutta High Court held in Santosh Vs Sachindra that when the tenant began to keep paying guest in the premises let out for residential purpose without thewritten consent of the landlord, he contravened S.13(1)(h) of the W.B. Premises Tenancy Act,1956. The Supreme Court has however overruled the said decision holding that such a plea was notsustainable on merits. It has also been held that when no such plea was taken either before the trial court or before the appellate court, the High Court was not justified in raising such plea for thefirst time in second appeal and holding that the tenant keeping one or two paying guest has contravened Section. 13(1)(h) of the W.B Premises Tenancy Act,1956.

3. Default barred by Limitation: The landlord can seek eviction on the ground of default that the tenant is in default of a rent for a period of three years prior to the institution of the suit. Thetenant cannot take the plea as arrears of rent for a period beyond three years of the suit is barredby limitation, the landlord cannot seek eviction on the ground that the tenant is in default ofpayment of rent for a period of more than three years prior to an institution of the suit.

4. Building and Rebuilding Cases - Duty of The Court: All that the landlord is called upon toshow is that he is genuinely building and rebuilding and in doing so he reasonably requires evic- tion of the tenants. There is no law by which the court can direct the landlord to alter his plans orto allow the tenants to make alterations in the building. It has no right to direct the landlord to construct new structures and let it out to the tenants. All that the court is required to do is to satisfyits conscience that the proposed building and rebuilding is not a ruse to get rid of his existingtenants.

5. Requirement in Future: Where requirement was likely to arise in 1973, but the proceeding for eviction was filed in 1969 on the ground of requirement, the eviction proceeding was neither premature nor liable to be rejected as being too early. An Existence of need on the date of applica-tion but in foreseeable future is sufficient.

It has been held by the High Court of Himachal Pradesh that a landlord can seek eviction of his tenant proving his need for accommodation in the foreseeable future. Similar is the view of theMysore High Court.

6. Consent of The Landlord: When the tenancy was taken for residential purposes, the conver- sion of the premises to run a printing press from there amounts to the change of user. It is con- tended by the tenant that there was consent of the landlord and as a proof of consent it is con- tended that the landlord had signed the vouchers prepared by the tenant from the letter head of thepress or receive the rent and consequently the landlord waived the change of user or that it was letout for running a press business. But the lease deed specifically stipulated that the lease was forthe residential purpose. Only because the landlord signed the vouchers in the letter pad of thepress to receive the rent does not amount to waiver or acquiescence.

7. The Procedure to be adopted by The Civil Judge In Connection With The Suit or EvictionUnder The Act: Section 6(1) as originally enacted entrusted upon the Rent Controller to entertain an eviction proceeding by a landlord against a tenant. It was to be by way of application and Rule

5 of the West Bengal Tenancy Premises Rules 1999 prescribed the procedure as well as the con-tents of such application. By West Bengal Premises Tenancy (Amendment) Act 2005, the saidjurisdiction has been conferred upon the Civil Judge having jurisdiction. But there was no changeas to the manner in which the same was to be disposed.

8. Permanent Structure: Construction of a surface drain, making many holes to the water pipe fitting through them, driving angles in walls for supporting a 20 gallon water reservoir, construc-tion of pucca masonry wall upon the floor of the Verandah by digging open a part of his floor,conversion of a substantial part of the open verandah into a closed room, making of pucca con- struction to serve as receptacle of refuse matters are acts in contravention of Clause (p). Construc- tion of pucca structure having walls of brick with cement joining consisting of two rooms sepa-rated by verandah etc. come under Clause (p). Unauthorized construction of a room with brickand cement with title shed on the roof of the tenanted premises is permanent structure.

9. Partial Eviction- Relevant Considerations: At the initial stage the court has to consider first as to whether the landlord required the premises reasonably. It can allow partial eviction on beingsatisfied the partial eviction will substantially satisfy the need and requirement of the landlord. Even if the landlord seeks eviction of the whole premises the court is to consider that aspect of thecase and even if the tenant did not advance any pleading to that effect. After such finding the courtshould ascertain if the tenant is agreeable to the partial eviction and if the tenant agrees it shouldproceed in accordance with Section 13(4) of the Act notwithstanding no such plea has beenraised by the tenant.

10. No Special Rights for Long Term Tenants: A tenant no matter how long he has been in possession of the residential or a commercial place, it does not give him any special right or any protection from saving himself from being evicted by the landlord. If the landlord succeeds provingto the court of law that he needs it for his own use or occupation, the court will direct the tenant toevict the said premises of the landlord.

11. Eviction from a Commercial Place: A tenant can be evicted not only from residential pre-mises but also commercial premises to meet the bona fide requirement of the landlord for his owuse or occupation. Any such discrimination Vis-à-vis residential and nonresidential premises would lead to violation of Article 14(Equality Before Law) of the Constitution of India.

In was also by way of application. But when the West Bengal Premises Tenancy (Amendment)Act 2006 has provided the eviction of a premises tenant under the Act shall be by a suit, then all the persons of CPC relating to the pleadings, the procedure for filing the suit filing of writtenstatements and other relevant procedure become applicable. It is to be entertained as a civil suit towhich all the provisions of CPC shall be attracted.

Conclusion :

The Legal eviction of tenants had always been of a great concern. In Initial days the landlord misused their powers and get used to illegally evict the tenants from their premises. But from lastfew decades,the law has given some specific protection to the tenants - Protection of Tenants fromEviction. The court see into the matter and are to judge and pass an order only after looking intothe genuine requirement of the landlord for his own use or occupation. Almost all the states of thecountry has similar provisions and has given similar rights to the tenants against illegal eviction.

: Introduction

Property guarantees freedom to individuals, when it is land, it embodies a bundle of rights.Land is one of the scarce natural resource in the world. It is not possible either to increase or to decrease the land. It is to be ensured that land is managed judiciously and in a suitable manner tothe common good of people that can be ensured in a long run. Property is special because it allocates scarce resources and is fundamental for the exercise of other rights. In other words,property rights determine access to the basic means of subsistence, they are the prerequisite to themeaningful exercise of all other rights. In Waman Rao v. Union of India1 a constitutional bench had observed that India being a predominantly agricultural society, there is a "strong linkagebetween the land and the personal status in the social system." The tip of land on which they tilland live, assumes them equal justice and dignity of their person by providing to them a neardecent means of livelihood.

Right to property is the natural and inherent right of individual. Hence, every individual has a right to own and possess the property. This right of the individual conflicts with the right of the State to acquire property under the doctrine of eminent domain. This conflicts of rights i.e., the right of the individual to protect his property and the right of the State to acquire property of the subjects has become a matter of debate in this decade. Eminent domain is the incidental exerciseof sovereign power of the State to acquire private property for public purpose by providing just compensation. The power of eminent domain has been explained that when public need requires acquisition of property, the need is not to be denied because of an individual's unwillingness tosell. When the need arises, individuals may be required to relinquish ownership of property, solong as they are given just compensation.

Eminent Domain means State sovereign power to take property for public cause without owner's consent, coupled with the obligation to make good to the loss and it is the power of the State to appropriate any land from a private person for a public purpose. It is the ability to take privately owned property. Hence, Eminent Domain refers to "the power possessed by the sovereign or theState over all the property within the jurisdiction of State". Every government has an inherentpower to take and appropriate the private property for public use. In justification of the eminent domain power, two maxims are often cited: Salus Populi Est Supreme Lex and necessitas publica major est quam private. Salus Populi Est Supreme Lex means welfare of the people is only consid- eration may be said to be the corner stone of the law of the land. The maxim means that 'regardfor the public welfare is the highest law'. This phrase is based on the implied agreement of everymember of society that his own individual welfare shall in cases of necessity yield to the commu- nity; and that his property, liberty and life shall, under certain, circumstances, be placed in jeop- ardy or even sacrificed for the public good. necessitas publica major est quam private meanspublic necessity is greater than private necessity, application of this doctrine in India gives im- mense powers to the State for acquiring land for public purpose. State can expropriate property rights through compulsory acquisition processes. Compulsory acquisition law, as a restraint onthe property right of individual therefore, people cannot sell-off their property as per their wish. The exercise of such power has been recognized in the jurisprudence of all civilized countries as conditioned by public necessity and payment of compensation. On these two maxims whole law of Land Acquisition is based.

The importance of the power of eminent domain to the life of the state has been recognized byalmost all the sovereign civilized countries. It is so often necessary for the proper performance of the governmental functions to take private property for public use. Thus property may be neededor acquired under the power of eminent domain for government offices, libraries, slum clearance

projects, public schools, colleges and universities, public highways, public parks, railways and many other projects of public interests, conveniences and welfare. The power is inalienable founded upon the common necessity of appropriating the property of the individual. Interest of the whole of the community is greater than the individual interest. Thus, eminent domain is an inseparable incidence of sovereignty. The U.S. Courts in U. S. v. Jones2 has observed that there is no need to confer this authority expressly by the Constitution it exists without any declaration to that effect.

However constitutional provisions provide safeguards subject to which the right may be exer- cised. Limitations (safeguards) are (i) valid law (ii) public purpose and (iii)compensation. Private property can be acquired through valid law only; secondly, property acquired only for public purpose and not for private purpose; and thirdly, compensation must be given for acquisition of property means property should not be condemned. The right of eminent domain is the right of State through its regular organization to reassert either temporarily or permanently, its domain over any portion of the soil of the State on account of public agency and for public good in time of war or insurrection. The proper authorization may possess and hold any part of the territory for common safety in time of peace for public purpose.3

After analyzing the constitutional framework of right to property it becomes important to get asense of law which governs routine takeover of land by the State in India. Therefore counterpart to the law of Eminent Domain of America or the Law of Compensation of England is the Law of Land Acquisition and Compensation in India. The Land Acquisition Act, 1894 forms the parent Act in India and it is the basis of all control and State laws relating to compulsory acquisition and compensation4. Then again what the statute seeks to achieve is acquisition, not confiscation5 means, in every acquisition law there are two inbuilt conditions or safeguards subject to which State can acquire the property namely, right of the expropriated owner to receive compensation and secondly, no acquisition is permissible without public purpose.6

The Act was legislated during the colonial period to take over land needed for public purposes.The Act has been amended periodically with substantial amendments made in 1984. Though it is a central law, various States have made amendments to the Act in consonance with local condi- tions.

The preamble to the Act, States categorically that individuals whose property is taken over has a right to receive compensation. The bulk of the Act is devoted to creating a regime relating to the manner in which an acquisition is to be made, the compensation to be paid and the procedures are to be followed while pursuing the acquisition. In the twenty first century, everything looked from the perspective human right, as such this colonial Land Acquisition Act in many respects violated the human rights. For example under this Act no procedure was adopted for displacement of project affected families, therefore, when property was acquired, they are forcible displaced and displacement may be inhumane. There is no provision for Social Impact Assessment of any projects, there is no any additional protection for marginalized people like SCs and STs land losers except monetary compensation, moreover, it does not provide any kind of protection except mon-etary compensation to the land losers. As a result of which to have a unified legislation dealing with acquisition of land, just or fair compensation and to have rehabilitation and resettlement mechanisms for the project affected persons the new LARR Bill was drafted which was laid on the table of parliament in 2011, due to political unwillingness to bring out this legislation, it was lapsed. On 1st January 2014 the Right of Fair Compensation and Transparency in Land Acquisi- tion, Rehabilitation and Resettlement Act, 2013 came into force and replaced the earlier colonial Land Acquisition Act, 1894. Therefore present chapter gives an overview of the Land Acquisition Act, 1894, its provisions, its deficiencies and the need of a reformation in land acquisition laws.Further, an attempt has been made to analyse, appraisal and critique the Land Acquisition Act, 1894 while comparing it with present Act.

Historical Background of Land Acquisition Act, 1894

The first piece of legislation in India in respect of acquisition of property was the Bengal Regu-lation 1 of 1824. It applied through the whole of the provinces immediately subject to the Presi- dency of Fort William.7 It provides rules for enabling the officers of government to obtain land, at a fair valuations or other immovable property required for roads, canals or other public purposes.Some lands were acquired in Calcutta for public purposes, even though there was no proper legislation to that effect. In order to remove the legal complications, Act 1 of 1850 was enacted with a view to confirm the title to the land acquired for public purpose. In the middle of the nineteenth century, when the railway were being developed, it was felt that legislation was needed for acquiring lands for them. Act XLII of 1850 declared that Railways were public works within the meaning of the regulation and thus enabled the provisions of Regulation 1 of 1824 to be used for acquiring lands for the construction of railways.

In Bombay, the building Act XXVIII of 1839 was the first piece of legislation whereby the machinery for acquisition of land for the purposes of widening or altering any existing public road, street or other thorough fare or drain or for making any new public road or thorough fare within the islands of Bombay and Colaba was provided. This Act was extended by the Act XVII of 1850 to taking lands for railway purposes within the presidency.8 In Madras Act XX of 1825 was passed for the purpose of facilitating the acquisition of land for public purpose in the presidency of Fort St.George. Generally in Madras presidency, the compensation as per the Act was to be settled by the collector or if the parties disputed it, by arbitration. Simultaneously Act 42 of 1850 (Bengal) was extended to the presidency. Both these Acts were extended by Act 1 of 1854 for acquisition of Land in Madras town.9

For the purpose of making one general law for acquisition of land for public purpose all the earlier Acts were repealed. The first enactment on this subject for the whole India was Act VI of 1857. Its object, as Stated in its preamble was to make better provision for the acquisition of land needed for public purposes within the territories and under the governance of the East India Company and for the determination of the amount of compensation for the property acquired.10 Under this Act, the collector was empowered to fix the amount of compensation by agreement, if possible; but if there was no such agreement, the dispute had to be referred to arbitrators whose decision was to be final and arbitrator could not be impeached, except on the ground of corrup- tion or misconduct. This Act was amended by Act 11 of 1861 and XXII of 1963. A few years'experience of the working of the Act revealed that the method of settlement of compensation by arbitration was unsatisfactory as the arbitrators were found to be incompetent and sometimes even corrupt. There was no machinery (provision) provided in the Act to get their decision revised and there was no provision to appeal against award of arbitrators. The legislature had to inter-vene and Act X of 1870 was passed. This Act for the first time provided for reference to a civil Court for determination of the amount of compensation when the collector could not settle it by agreement. It laid down a detailed procedure for acquisition of land and also provides definite rules for determination of compensation. In 1885, a separate Act (XVIII of 1885) was passed with the object of making provision for the grant of compensation to the owners of mines under the land which was acquired by the government, where such mines were not required by the govern-ment but the owners were prevented from working on them11.

Since, there were still loopholes in that Act, therefore the Act of 1894 was passed and it en- abled to apply to the whole of British India.12 But some of the native states like Mysore, Travancore, Hyderabad etc., were having their own Acquisition Laws.13 Under the government of India Act, 1919 and the Government of India Act, 1935 (item 9 of list II of the VII Schedule) provinces had power to legislate with respect to compulsory acquisition of land. In exercise of this power, some of the provinces amended the provisions of the Act in certain respects. After the Independence

Act, 1947 subsection (2) of section 1 of Land Acquisition Act was amended by substituting thewords 'all the provinces of India' for the words 'the whole of British India'. After the constitution, under the adaptation order of 1950 for the words 'the provinces of India' the words 'the whole ofIndia except part B States' were substituted. The Part B States Laws Act, 1951 (III of 1951), did not extend the Land Acquisition Act to Part B State.14

: The Land Acquisition Act, 1894

The Land Acquisition Act was enacted with an intent to further governmental purposes likeroads and railway, police stations etc. But later with time the need was felt that Act should alsoresort to public utilities such as water and electricity companies or transport undertakings (even when they were privately owned), or charitable institutions. Lands have also been acquired onlarge scale for building of big dams and irrigation projects. The Land Acquisition Act 1894 waspassed in order to remove certain anomalies in the existing system of land acquisition as laiddown by the previous legislation Act X of 1870.

The Main Objectives of the Land Acquisition Act 1894 :

a. To abolish the institution of arbitrators, who previously were entrusted with the duty of valuing the land. The 1870 Act laid down no rules for their functioning and as such the entiresystem could be said to be incomplete.

b. The 1894 Act was supposed to incorporate detailed instructions regarding compensation.

c. To avoid unnecessary delays, the position of the assessor was to be abolished. This would lend fluidity and more transparency system.

d. The 1870 Act ensured that Collector was to bear the costs of litigation of the final award was in excess of his tender. This led to 'extravagant and speculative' claims being made. The Land Acquisition Act made the award of the collector final unless by a decree in a civil suit.

e. Similarly, in the 1870 Act, interest was payable on the amount of the award arrived at from the date of the collector's taking possession of the land. As the interest would continue to accumu- late through a period of litigation, this prompted many land owners to go in for excessive litigation, thereby slowing down the entire process of acquisition as well as draining the State exchequer.

f. The previous rule of compulsory reference in cases where there was no agreement amongst the several claimants as regards apportionment amongst the claimants was also abolished. In the1894 Act, the collector may make an apportionment against the claimants and if a person isaggrieved, he may within a period of time specified in section 18, apply to the collector for areference to the Courts.15

: Constitution and the Act

The provisions of the Act are not hit by the constitution. Even when Articles 19(1)(f) and 31were not deleted it was held that the Act is an existing Law. Article 31(5) laid down that nothing inclause (2) of Article 31 would affect the provision of any existing law other than a law to which theprovisions of clause (6) of Article 31 would apply. The Act being law to which the provision ofclause (6) did not apply was held to be constitutional even when article 31 was not deleted. Nowposition is different Article 31 has been deleted and Article 300A provides that no person shall bedeprived of his property save by authority of law, therefore Land Acquisition Act 1894 cannot be held to be hit by the Constitution. Moreover, the acquisition under the Land Acquisition Act is forpublic purpose, on payment of adequate compensation, though the Act provides for compulsory acquisition of property for public purpose, it cannot be held that such deprivation is not autho-rized by law.16

: Object of the Act

The object and intention of the Act is to comprise in one general Act sundry and elaborateprovisions relating to acquisition of land for "public purpose", for assessing the amount of com- pensation and it is for avoiding the necessity of repeating such provisions in subsequent Acts dealing with acquisitions. As well as for ensuring uniformity of the provisions the sections of the Land Acquisition Act with other Acts introduced subsequently, thus the Act 1 of 1894 came into existence.17According to the entry 42 of the seventh schedule of the constitution both union andState government are competent to legislate on the subject, the principal enactment dealing with acquisition of property in the country is the Land Acquisition Act, 1894 which is a Central Act. Several States have amended certain provision of this Act under clause(2) of Article 254 of theConstitution. Some States, like Kerala and Rajasthan, have their own Land Acquisition Act, whichare valid subject to the provisions of Article.

In Somawati v. State of Punjab 19 the Supreme Court held that object of the Land Acquisition Act was to empower the government to acquire land only for public purposes or for a company. Where it is for a company the provisions of part VII should be complied with, only after the government is satisfied that the purpose of the company is directly connected with or for the construction of some work which is likely to prove directly useful to the public land, could beacquired.

: Town Development Acts vis-à-vis Land Acquisition Act, 1894

For proper development of urban areas certain State Acts, have been enacted, Ex. Delhi Devel-opment Act, Calcutta Metropolitan Act, etc. But it is to be borne in the mind that development is one thing and acquisition is another. Development in that city or town after the enforcement of thedevelopment Act has to be in conformity with the said Act, but it will not be correct to say that land could be acquired after the Development Act coming into force under the said Act only and once it could be acquired under Urban Development Act, same could not be acquired under the Land Acquisition Act.20

: Legislative Competency of Land Acquisition Act

A law must be in conformity with the Constitution. It is therefore, necessary to examine theextent of the legislative power of the union and the States in respect of a law for acquisition andrequisitioning of land. Before 1956, the legislative power in respect of acquisition and requisition-ing of property was distributed between the Union and the States and the power to lay down theprinciples of compensation was included in the concurrent list (vide Entry 33 of the union List andentry 36 of the State List of the seventh schedule). This anomalous position was put to an end by the Constitution (Seventh Amendment) Act, 1956, by omitting all these entries in the Union List and the State List and substituting for Entry 42 in the concurrent List of the seventh schedule thewords "acquisition and requisitioning of property. Union and State list are now empowered toenact laws relating to acquisition of property.21

: Validity of the Act

Under Article 300A of the Constitution of India "no person can be deprived of his property saveby authority of law". In the view of this provision a citizen cannot be deprived of his property by an executive. There must be law for it, Land Acquisition Act is the law. This Act therefore, fulfils the constitutional obligations. In the absence of provisions in the Act for taking over possession of the notified or the acquired land the acquisition would been futile. Therefore, the Act provides for interference with possession and taking over possession of the notified or acquired land. Acquir- ing land without payment of compensation would have been arbitrary, violating the Article 14.Accordingly, the Act provides for assessment and payment of compensation.

The experience of more than one century witnessed that the provisions of this Act have been found to be inadequate in addressing certain issues like rehabilitation and resettlement of project affected persons, social impact assessment of projects.

Therefore, this Act replaced by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. Aim of the Act was to ensure a humane, participatory, informed consultative and transparent process of land acquisition with the least disturbance to the owner of the land and other affected families and to provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition. Make adequate provisions for such affected persons for their rehabilitation and resettlement thereof, and for ensuring that the cumulative outcome of compul-sory acquisition should be that affected persons become partners in development leading to an improvement in their post-acquisition and social economic status and of matters connected there-with or incidental thereto. The scope of the Act extend to all over India except the State of Jammu and Kashmir. The Government of India requires a combined law, one that legally requires reha- bilitation and resettlement necessarily and simultaneously follow government acquisition of land for public purpose. The Law is clear that States are free to enact their own legislations and policies on land acquisition, provided provisions on resettlement and rehabilitation shall not be less than what is provided in the Central Act (Right to Fair Compensation and Transparency in Land Ac-quisition, Rehabilitation and Resettlement Act, 2013).

Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Re-settlement Act, 2013 would apply when :

1. Government acquires land for its own use, hold and control.

2. Government acquires land with the ultimate purpose to transfer it for the use of private companies for States public purpose. The public purpose of Act includes public private partner- ship project, but excludes land acquired for stated national highways projects.

3. Government acquires land for immediate and declared use by private companies for public purpose.

Need for the Act

The government of India claims that there is lightened public concern on land acquisitionissues in India. Despite of many amendments to the Land Acquisition 218

Act, 1894 over the years, there was absence of a cohesive national law that addresses to :

1. Fair compensation when private land is acquired for public use and

2. Fair rehabilitation of land owners, who are directly affected from loss of livelihood.

: The Procedure to Theory

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 provides compensation for expropriated land, houses and other immov- able which are carried out under the Act. The Act is commonly used for acquisition of land for any public purpose. It is used at the individual State level with State amendments made to suit local requirements. In addition to this parent Act, there are other States legislation for land acquisition.Notwithstanding anything contained in this Act section 104 of the Act provides that the appropri-ate government shall, whenever possible, be free to exercise the option of taking the land on lease, instead of acquisition, for any public purpose. The Act deals with compulsory acquisition of pri-vate land for public purpose. The procedure set out include :

i) Preparation of Social Impact Assessment Study

ii) Preliminary notification (Section 11);

iii) Declaration of notification (Section 19);

iv) Notice to the persons interested (Section 21);

v) Enquiry and award (Section 23);

vi) Possession (Section 38) ;

vii) Reference of the Authority (Section 64);

viii) Acquisition of Land for Companies.

It is better to analyse the provisions of the present wherever it demands researcher meticulously observe the discrepancies in the two Acts. Since the sole objective of the Act is acquisition of land,it would be better to understand the term land within the meaning of the Act, definition of term land under section 3 (p) of the Act which is not conclusive but inclusive and reads as follows :

"The expression land includes benefits arising out of land acquired and things attached to the earth or permanently fastened to anything attached to the earth".

For the purpose of land acquisition, proceeding are carried on by an officer appointed by the government known as Land Acquisition Collector. The proceedings carried out by the land acqui-sition collector is of an administrative nature and not judicial or quasi judicial character. In Jayanti Lal Amrit Lal Shodhan V.F.N. Kana 24, Supreme Court inter alia, decided on this point and heldthat hearing as per section 5-A of Land Acquisition Act,1894 is not judicial or quasi-judicial it is only an administrative nature proceedings.25

: Social Impact Assessment

Preliminary step in land acquisition under the Act starts with preparation of Social ImpactAssessment under section 4 of the Act. Whenever the appropriate government intends to acquireland it shall consult the concerned Panchayath, Municipality or Municipal Corporation as the casemay be to carry out a social impact assessment study. Appropriate government (District collector, the sub divisional magistrate, Teshildar) issued notification for the commencement of the Social Impact Assessment in consultation with panchayat, municipality or municipal corporations as the case may be, and notification shall be available in local language to the panchayat, municipality or municipal corporation and as well as it is uploaded in the appropriate government website. As per section 5 of the Act, public hearing for social impact assessment to ascertain the views of theaffected families and to be recorded in the social impact assessment report. Social impact assess-ment report includes the following matters, namely :

1. Whether the proposed acquisition serves public purpose;

2. For estimation of affected families and among them likely to be displaced.

3. Extent of lands, houses, settlement and other colony to be affected by the property likely to be affected by the proposed acquisition;

4. Whether the land acquisition at an alternative place has been considered and found not feasible; and

5. To study the overall cost investment and benefits of the project. Social Impact Assessment along with Environmental Impact Assessment shall be carried out. After the completion of the assessment report, Social Impact Management Plan along with the social impact assessment re- port made available in the local language to the panchayat, municipality or municipal corporationas the case may be. Same should be published in the affected area and uploaded in the govern- ment website. Social Impact Assessment Study should be completed within the six months from the date of its commencement. Government shall ensure public hearing in the affected area during the course of social impact assessment.

Under section 7 of the Act an independent multi-disciplinary group shall evaluate the social impact assessment report. Multi-disciplinary group consists of two non-official social scientists, two representative from panchayat or grama sabha, municipality or municipal corporation as the case may be and two experts on rehabilitation and one technical expert. The expert group within two months from the date of its constitution should submit its opinion that whether the proposed project will serve the public purpose and whether the potential benefits outweigh the social cost and adverse social impact and, whether the extent of land proposed to be acquired is the absolute bare minimum and whether there is no other less displacing options available.

Under section 8(2) of the Act appropriate government after examining the report of the social impact assessment and report of the collector if any, recommended such area for acquisition provided it ensure minimum displacement of people, minimum disturbance to the infrastructure, ecology and minimum adverse impact on the individual. Appropriate government will make sure that prior consent of the affected families in case of acquisition for private companies at least 80 per cent and at least 70 per cent in case of acquisition for private public partnership projects.

Under section 9 of the Act appropriate government may exempt the land which is sought to be acquired by invoking the urgency clause (section 40 of the Act) from social impact assessment study.

If preliminary notification is not issued within 12 months from the date of appraisal of the social impact assessment report submitted, then such report shall be deemed to have lapsed and a fresh social impact assessment shall be required to be undertaken prior to any acquisition.

: Limitations on Acquisition

Section 10(1) of the Act provides that no irrigated-multi cropped land shall be acquired under this Act, if it is acquired only as a last resort and subjected to development of an equivalent wetland for agricultural purposes or an amount equivalent to the value of the land acquired shall be deposited with the appropriate government for investment in agriculture for enhancing food security. Provided that the provisions of this section shall not apply in case of projects which are those relating to railways, highways, major district roads, irrigation canals etc.

: Rehabilitation and Resettlement

Under section 16 of the Act after issuing preliminary notification the administrator for rehabili-tation and resettlement shall conduct survey and make census of the affected families. Based on the survey and census reports the administrative officer shall prepare a draft of rehabilitation and resettlement to provide rehabilitation and resettlement to each land owner and landless persons. For the purpose of the Act, 'landless persons' means whose livelihood primarily dependent on the land is being acquired. The draft of rehabilitation and resettlement scheme shall prescribe the time limit for implementing rehabilitation and resettlement scheme, and it shall be made known locally. In preparation of rehabilitation and resettlement scheme administrator shall give public, hearing opportunity to raise an objection against the acquisition and rehabilitation and resettlement scheme. After completion of public hearing administrative officer shall submit the draft scheme of rehabili-tation and resettlement along with the report of the clients objections raised in the public hearing. After reviewing, collector submits his report along with suggestions to the commissioner of reha-bilitation and resettlement for approval.

Appropriate government or collector after being satisfied with the report that any particular land is needed for public purpose, a declaration shall be made and declaration shall be accompa- nied with summary of rehabilitation and resettlement scheme. Unless, the compensation has been deposited either in full or part no declaration shall be made.

: Preliminary notification (Section 11)

Under the repealed Land Acquisition Act the process of acquisition begins with a preliminary

notification on signaling the need to acquire the land. When the government intends to occupy a land in any locality, it begins with issuing a notification under section 4 in the official gazette, and in two daily newspapers circulated in the concerned locality of which at least one shall be in the regional language.27 In State of Gujarat v. Panch of Nani Hamam's pole27 A Supreme Court has made it clear that, personal service of notice is not contemplated by section 4(1) of the Land Acquisition Act 1894. Thereafter at least seven days a public notice may be given which entitles anyone 28 on behalf of the government to enter the land for the purposes of digging, taking level, setout boundaries etc. The notification puts forward the intention of the government to acquire land and entitles the government officials to investigate and ascertain whether the land is suitable for the purposes. Owner or occupier of the land cannot obstruct the entry of such person. How- ever, the law provides for payment of damages by the officer so authorized to enter upon the land who shall at the time of such entry, pay or tender payment for all necessary damages to be done as described in section 4(2) of the Act. In case of dispute as to the sufficiency of the amount and dispute shall at once refer to the decision of the Collector or other Chief Revenue officer of the District and such decision shall be final, no suit will lie to that effect in any Court. However, if the amount of damages is not accepted by the owner, the same will be included in the final award.29 Damages awarded under section 5 are different from those contemplated under section 17 for sudden dispossession under emergency condition.30

But under section 11 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, preliminary notification published in a local language of Panchayat, Municipality or Municipal Corporation, as the case may be in the Official Gazette and in daily newspapers circulated in the concerned local authority of which at least one shall be in regional language, and also uploaded in the appropriate government website. Preliminary notification issued under the section 11(1) of Act shall also contains summary of social impact assessment report and particulars of the administrator appointed for the purposes of rehabilitation and resettlement under section 43 of the Act. Damages awarded under section 13 are different from those contemplated under section 69 for sudden dispossession under emergency condition.

: Interested Person

Under the section 15(1) of the Right to Fair Compensation and Transparency in Land Acqui- sition, Rehabilitation and Resettlement Act, 2013 any interested person can raise an objection within sixty days from the date of publication of preliminary notification in writing and in person. Whereas under section 5(A) of the Land Acquisition Act, any person interested in land which is notified under section 4(1) can raise an objection, within thirty days from the date of publication of notification in writing or in person.

Under the scheme of the Act [section 21(2)] compensation for acquisition of land for public purposes is payable only to the person interested. Thus, there is need to know who is the person interested. Section 3(1)(x) of the Act defines the term "person interested" is deemed to be inter-ested in land who would be entitled to claim an interest in compensation if the land were acquired under the Act. In Bhyrava Murthy v. M. Venkataraju 31 Court held that the term "person inter- ested" has to be given a broader meaning if a situation warrants it seeks to include a person having an interest in an easement and also a beneficiary.

In A. P. Agricultural University v. Mohammdunissa Begum 32 full bench of Patna High Court relying on the several decisions of the Supreme Court held that the expression "person interested" does not require a person must have really an interest in the land sought to be acquired. It is enough if he claims an interest in the compensation, as distinguished from an interest in the property sought to be acquired.

Court further held that a purchaser of land would not become a person interested on the ground

that he was liable to pay the additional price in the event of enhancement of compensation for theacquisition of land in terms of sale agreement.33 In Amar Singh Jadar v. Shanti Devi 34 a party who is in possession of is the prima facie evidence entitled to compensation, so he is a person interested. Whether he is in occupation in the capacity of a tenant or a licensee is immaterial.

: Personal Hearing of Objections

Essence of the section 15(2) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act is that personal hearing of objections of the person concerned and absence of such hearing renders the acquisition invalid from the inception. The collector after making inquiry of such objections35 has to forward the report to the govern- ment whose decision in this respect would be final. The enquiry under the section 15(1) is of quasijudicial nature collector must give the objector an opportunity of being heard in person or by pleader. Under the section 15(3) decision of the appropriate government shall be final against objections of the interested person pertaining to acquisition.

Whereas section 5A of the Land Acquisition Act, 1894 provides for hearing of objections. The main advantages of the enquiry were assessed by the Gujarat High Court in Patel Gandalal Somnath v. State of Gujarat 36 the Government can decide whether any particular land is needed for a public purpose or for a company and the enquiry also enables persons interested to show how acquisition of land in question will not serve the public purpose at all involved in the manner. However decision once taken under section 5A cannot be cancelled or altered.37 In case the State government has taken the decision in favour of objector, it is no longer possible to make declaration under section 6of the Land Acquisition Act and the land notified under section 4(1)38 cannot be acquired.

After considering such report made by the collector under section 15(2) of the present Act thegovernment shall issue a declaration 39 within twelve months from the date of the preliminary notification to acquire land for public purposes, PPPs or company. Declaration is a mandatory requirement for every acquisition. No such declaration shall be made unless the Requiring Body deposits an amount of compensation, in full or part, as may be prescribed by the appropriate government towards the cost of acquisition of the land.40 Failure to give a personal hearing is fatal and renders the proceedings illegal.41

A person having no right and interest in the land which is sought to be acquired, has no locus standi to file an objection and question the validity of the acquisition.42 There is no second opportunity for making representation after completion of enquiry under section 5A of the Act.43 Acquisition in case of urgency enquiry under section 5A is dispensed with. There is nothing in section 4(2) (1A) of the LA (Mysore extension and amendment) Act, 1961 to show that service of individual notice is mandatory.44 Under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 urgency clause is invoked for lim-ited purposes like national defence, security purposes and rehabilitation and resettlement needs in the event of emergencies or natural calamities only.

No specific grounds are mentioned in the section 5A of the Land Acquisition Act or even under the present Act, for raising an objections. Case laws that have been build up and executive in-structions issued by various State governments reveal the following objections that can be raised:

a. that one's land is not needed / suitable for the purposes

b. that is not a public purposes

c. that more land has been acquired than necessary

d. that the acquisition will destroy historic monuments or places of public interest or that it will desectionrate religious buildings

e. without objecting the acquisition one can object to the omission of one's name from the list of persons having an interest in a particular land

f. later, one can object to the low quantum of compensation.

The grounds mentioned in a, b, c and d are very difficult to invoke without knowing exactlyhow much of land is being acquired and exactly for which purposes.

Acquisition of Land for Companies

Ashok Kumar Kesharwani v. State of Uttar Pradesh 45, in this case acquisition of land for the company, the land owner is entitled to an opportunity of being heard under Rule 4 of the Land Acquisition (companies) Rules, 1963 over and above an opportunity of hearing an objection under section 5A of the Act. Objections raised under Rule 4 cannot be raised in an enquiry undersection 5A therefore, failure to hear the objection under Rule 4 will be fatal and enquiry undersection 5A of the Act did not satisfy the requirement contained in Rule 4 of the Companies Acqui-sition

Rules : The owners of the land are entailed to an opportunity of being heard in an enquiryunder Rule 4 and enquiry under section 40 of the Act. When no such opportunity is given, the acquisition is vitiated.

Section 5A didn't apply in the following cases viz. (1), for emergent acquisition of land sought under section 17; (2) temporary occupation of waste or arable lands under the Act; (3) acquisitionof part of house or building under section 49 of the Act. However, above facts are required to be mentioned in the notification issued under section 4(1) of the Act. 46.

Under the new Act there is no such kind of different procedure of acquisition of land for publicpurposes and for companies. Whereas under the new Act land acquired for the purposes men-tioned under the section 2(1) of the Act rehabilitation, resettlement and compensation shall beapplied and land acquired under section 2(2) of the Act consent, rehabilitation, resettlement andcompensation shall be applied.

Even if a private company purchase land or it request the appropriate government for acquisi-tion of a part of an area so prescribed for a public purpose is above the trigger i.e., more than 50acres in urban area and more than 100 acres in rural areas must comply with rehabilitation and resettlement provision in addition to compensation.

: Declaration of notification (Section 19)

Power to acquire land is given by the Act. If the land is found suitable, a declaration containingthe intention of the government to take over the land is issued. Before the declaration is issued under section 19 of the Right to Fair Compensation and Transparency in Land Acquisition, Reha- bilitation and Resettlement Act it must appear to the appropriate government that the land in anylocality is needed or is likely to be needed for any public purpose, then appropriate government after being satisfied with the report made under section 15(2) of the Act, a declaration shall be made to that effect, along with a declaration of an area identified as the "resettlement area" for the purpose of resettlement and rehabilitation of the affected families.

Publication of summary of Rehabilitation and Resettlement Scheme is mandatory.

Hence, present the Act provides more security to the land losers. The said declaration made under section 19 of the Act shall be conclusive evidence that the land is sought to be acquired.

Under the repealed Land Acquisition Act, 1894 in case of land acquisition for companies it isimperative compliance with the acquisition procedure under part VII of the Act and Rule 4 under the Land Acquisition Rules 1963. Unless the conditions enjoined by rule 4 are complied with, the notification issued under section 6 would be invalid. In the present Act acquisition of land for

infrastructural development project by the private companies or for public-private partnership project prior informed consent of 80 per cent of the project affected persons are mandatory.

After making such declaration the local government may acquire the land through procedure. Section 19 comprise two parts (1) satisfaction of the government that particular land is needed for public purposes and (2) appropriate government only can make a declaration after considering the report. The declaration would be bad, if it is made by the appropriate government which is not appropriate and proceedings for acquisition founded on such bad declaration may be quashed through writ petition. However, particular land needed for a public purpose or for a company is subjected to satisfaction of the government. Subjective satisfaction of the government is not re- viewed by the Court as an appellate form but grounds for arriving to such satisfaction could be reviewed by the Court. Declaration shall be made under the signature of the secretary or of duly authorized officer. No declaration under this section is to be made unless the requiring body deposits amount in full or in part which is to be paid by a company, or wholly or partly out of public revenue.

When it is found that the notification has been issued under section 19 without taking into account the report of the collector made under section 15(2), then such notification could be invalid in Law.

Under section 40 of the Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation and Resettlement Act urgency clause has also been limited for the purposes of national defence, security purposes and rehabilitation and resettlement in the event of emergen- cies or natural calamities. Appropriate government under the urgency clause may on expiration of thirty days from the date of publication of notice mentioned under section 21, take the possession of the land.

Before taking possession of the land collector shall tender payment of 80 per cent of compensa-tion to the interested persons.

In the repealed Land Acquisition Act, 1894 Government dispenses with the requirement of enquiry under section 5A when collector invokes emergency clause under section 17 of the Act. Before an amendment to the section 17(4) of the Act there is no irregularity in publishing prelimi-nary notification and declaration that the land is needed for a public purpose simultaneously.48 After Amendment Act 68 of 1984, the notification under section 6 containing declaration that land was needed for public purpose should be issued and published subsequent to the notification issued under section 4(1) of the Act. Therefore, situation existed before repealing the Land Acqui- sition Act is that issuing of notification under section 6 and under section 4 simultaneously was invalid.49 The proviso to the section 6(1) was inserted by 1967 Amendment Act it, provides the time limit within three years of time limit a declaration shall be made under section 6(1) from the date of notification issued under section 4(1) of the Act.

This proviso has undergone further amendment, as per the Amended Act, 1984 the declarations hall be made under section 6(1) within one year from the date of publication of notification under section 4(1) 50 of the Act, provided delay more than one year for which government is respon-sible, notification issued under section 4(1) deem to be annulled.51 Cancellation something differ- ent from withdrawal of notification. Cancellation of notification under section 6 does not amount to withdrawal of acquisition by the government under section 48. Suppose the notification under section 6 is invalid, notification under section 4 cannot be exhausted because its purpose could be fulfilled only by issue of a valid notification under sections 6.52 Where as in case of a valid notification under section 6 was withdrawn, the notification under section 4 of the Act would get exhausted.53

Under section 19(2) of the Right to Fair Compensation and Transparency in Land acquisition,

Rehabilitation and Resettlement Act declaration shall be made within twelve months from thedate of the preliminary notification issued under section 11. If no declaration shall be made withintwelve months from the date of publication of preliminary notification, it shall be deemed to havebeen rescinded.

Additional advantage conferred under this Act is that if no declaration is made within the twelve months from the date of the preliminary notification appropriate government shall have thepower to extend the period of twelve months, if is in the opinion of the government circumstancesthat exist which justify the situation.

6.11.1: Publication of Declaration(section 19)

Under section 19 of the Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation and Resettlement Act, publication of declaration that the land is proposed to beacquired is for public purpose or for a public or public-private company, in the official gazette andin two daily news papers circulated in the concerned locality of which at least one shall be in the regional language and in the local language of the panchayat, municipality or municipal corpora-tion as the case may be, and also uploaded in the website of the appropriate government. Section20(6) further lays down that the declaration should be the conclusive proof of the fact that land so acquired by the government is needed for public purpose or for a company, as the case may be.

Under section 6 of the colonial Land Acquisition Act, 1894 if the publication of declarationthat the land is proposed to be acquired is for public purpose in the official gazette and in two dailynewspapers circulated in the concerned locality of which at least one shall be in the regional language. If the acquisition of land for companies, declaration shall be published only after anagreement as specified under section 41 of the Act is executed and the government has consultedthe committee is set up under rule 3 of the Land Acquisition (companies) Rules, 1963 and consid-ered the report made by the collector under rule 4.54

6.12: No Inconsistency between Sections 6 and 4 of the Act

The difference between section 4 and section 6 of the land acquisition Act is that whereas the farmer section refers to land in a particular locality, the latter contemplates a particular land. Again, under section 4 it must only appear to the government that the land is needed or is likely tobe needed for a public purpose under section 6 government must be finally satisfied that land is needed.55 The question arose before the Gujarat High Court in Gaundalal v. State of Gujarat 56 whether there is inconsistency between the provisions of sections 6 and 4?, because section 4 contemplates only issuing of a notification for proposed acquisition of land for public purposes whereas section 6 speaks of acquisition of land for a public purpose or far a company. It has,however been held that the acquisition for a company is also acquisition for public purpose in therestricted sense in accordance with the section 40 of the Act, therefore there is no inconsistency between these two sections.

In Union of India v. K.K. Chopa 57 under notification dated 13/11/1959 the Chief commis-sioner of Delhi acquired large tract of land in Delhi for planet development of Delhi. At that time land of respondents who were evacuated land was exempted from acquisition. But by a subse- quent notification dated 1/7/1961 the Chief Commissioner decided to include the land of the respondents also for planned Development of Delhi. The Supreme Court on the prayer of the respondents upheld the notification under section 4(1).

In Angera Devi v. Land Acquisition Collector 58 Supreme Court held that the issue of a notifi- cation under section 4(1) is a condition precedent to the exercise of any further power under the Act. In B.S. Tolani v. Union of India 59 when notification under section 4 exempted the govern- ment land and evacuee land from acquisition, the petitioner having acquired the evacuee land at

a public auction on 7/6/1960 is entitled to challenge the acquisition because notification undersection 6 was included the evacuee land even though section 4 notification exempted the evacuee land from acquiring. Notification under section 6 cannot be sustained, because there was no notification covering the land belonging to the petitioner under section 4 of the Act. In VenkataChalapat v. State of Tamil Nadu 60 Court held that, where land is acquired by the government forpublic purpose the question whether urgency exists or not for dispensing with requirement ofsection 5A of the Act by invoking section 17(4) is a matter of wholly for the determination ofgovernment and it is not a matter of judicial review. Same legal status continued under the present Act. Hence, there is no inconsistency between section 11 and section 19 of the Act.

6.13: Taking the order for the acquisition of Land

After the declaration under section 19, the next step in the process of acquisition is that thecollector of the district in which the land is located is empowered by the Act to make the order foracquisition and is required to measure and mark out the land which is mentioned in the declara- tion. Under section 20 the Collector has to get the land to marked out, measured and appropriateplan to be made accurately, unless it is already marked out under section 12 of the Act. Whereas under the Land Acquisition Act, 1894 obstruction under section 8 61 and section 4 are offencepunishable with an imprisonment not exceeding one year and with fine not exceeding fifty rupees. We could not find such kind of provisions under the present Act.

Section 21 of the Right to Fair Compensation and Transparency in Land Acquisition, Reha-bilitation and Resettlement Act requires the collector to cause a public notice on his website and atconvenient places expressing government's intention to take possession of the land. Under the clause (2) of the section 21 of the Act requires all persons 62 interested in the land to appearbefore him personally or by an agent or advocate not being less than thirty days and not more thansix months after the date of publication of notice under section 21 of the Act. They shall State thenature of their respective interest in the land and make claims for compensation, their claims to rehabilitation and resettlement along with their objections, if any, to the measurement of land[section 20 of the Act]. This section requires the collector to issue two notices, one in the locality of acquisition and other to occupants or people interested in lands to be acquired, and it is amandatory requirement.

The final step of collectors proceedings involve an enquiry under section 23 of the Act, collector shall conduct enquiry into the objections made (if any) by the interested persons in pursuant to anotice given under section 21, regarding measurements of land, value of the land at the date of publication of notification and making an award to persons claiming compensation and rehabili- tation and resettlement. The enquiry involves hearing parties who appear with respect to thenotices, investigate their claims, consider the objections and take all the information necessary toascertain the value of the land, and such an enquiry can be adjourned from time to time as thecollector thinks fit and award is to be made at the end of the enquiry. Compensation shall bedetermined under section 27 along with rehabilitation and resettlement award as determinedunder section 31 of the Act.

Section 23 makes it obligatory on the part of the collector to safeguard the interest of all personinterested, even though they might not have appeared before him. In awarding compensation collector should estimate the value of the land, give due considerations to the other specific factors that can be used as criteria. The collector shall make an award within a period of twelve months from the date of publication of the declaration. If no award made within that period, the entireproceedings for the acquisition of the land shall be lapsed. Provided that appropriate government shall have the power to extend the period of twelve months if in its opinion, circumstances existedjustified the same. Whereas in the Land acquisition Act, 1894 award shall be made within two

years [section 11A] from the date of preliminary notification otherwise whole land acquisition proceedings will be lapsed. Award means total compensation to be paid, determined by the col- lector. This final award includes "solatium" amount equivalent to one hundred per cent of thecompensation amount and, twelve per cent of interest calculated on amount of compensation from the date of publication of the notification of the Social Impact Assessment study under sub-section (2) of section 4 till the date of award of the collector or the date of taking possession of theland, whichever is earlier. Whereas in the predecessor Act only thirty per cent of solatium calcu- lated on amount of compensation and nine per cent of interest calculate from the date of prelimi-nary notification to the date of possession of the acquired land and fifteen per cent of interest calculated on amount of compensation from the date of possession of the acquired land till thedate final award.

6.14: Rehabilitation and Resettlement Award

Collector shall pass following minimum rehabilitation and resettlement entitlements to the LandOwners : Provision of Housing units in case of Displacement: For the purposes mentioned under this Act if a house is lost in rural areas, a constructed house shall be provided as per the IndiraAwas Yojana specifications, if a house is lost in urban areas, not less than 50 sq mts in plint area a constructed house shall be given. Provided that any such family in urban areas which opts not take the house offered, may get one lakh fifty thousand rupees as a one-time financial assistance. Provided further that if any affected family in rural areas so prefers, the equivalent cost of thehouse may be offered in lieu of the constructed house.

Provision of offering Developed Land : Where land is acquired for urbanization, 20% of thedeveloped land will be reserved and offered to land owners, in proportion to their land acquired. Provided that if land loser wishes to avail of this offer, an equivalent amount will be deducted fromcompensation.

Choice of Annuity or Subsistence grant : Land Loser may opt either for Choice of Annuity or Subsistence Grant.

In case of choice of annuity in rehabilitation package the appropriate government shall ensureemployment to the affected families with the following options : At least one member of the projectaffected family gets job in the project, where jobs are created through the project, after providing suitable training and skill development in the required field or one-time payment of five lakhsrupees to the 235 affected family or Rs 2000 per month per family as annuity for 20 years, with appropriate index for inflation for agricultural labourers.

In case of subsistence allowance in rehabilitation package Subsistence allowance at Rs. 3000 per month per family for 12 months to the affected family from the date of award. In addition tothis if the displaced persons are scheduled castes and scheduled tribes from scheduled areas shall receive fifty thousand rupees.

Special Provisions for ST's

1. Payment of one third of the compensation amount at the very outset to ST families;

2. Preference in relocation and resettlement in area in same compact block;3

Free land for community and social gatherings;

4. In case of displacement of Scheduled Cast or Scheduled Tribes families, a Tribal Displace-ment Plan is to be prepared :

Detailing process to be followed for settling land rights and restoring titles on alienated land.Details of programme for development of alternate fuel, fodder and non-timber forest produce.

: Completion of Acquisition is not Compulsory

Under section 93 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, the appropriate government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken. Collector shall determine the amount of compensation due for the damage suffered by the owner as a consequence of notice or of any proceedings there under.

Under section 48 of the Land Acquisition Act, government alone can withdraw from the pro- ceedings of acquisition before the possession is taken or before the award is made, by issuing a notification [de-notification] of releasing the land from acquisition. After award withdrawal ofacquisition proceedings is prohibited, whatever may be the circumstances, except when the pro-ceedings are declared invalid by a Court's decree of Civil Court.

6.18: Taking Possession of the Land under Acquisition process (section 38)

The collector may take the possession of the land after ensuring the full payment of compensa-tion as well as rehabilitation and resettlement entitlements are paid or tendered to the entitled persons within the period of three months for the compensation and a period of six months for the monetary part of rehabilitation and resettlements. Provided within the period of 18 months from the date of award components of the rehabilitation and resettlement package relates to infrastructural entitlement shall be provided. The collector shall held responsible for ensuring the rehabilitation and resettlement process is completed in all its aspects before displacing the affected families, thereupon land shall vest absolutely in the government free from all encumbrances 72 then State uses the land for what purpose it has been acquired.

Under section 101 of the present Act if the land acquired remains unutilized for a period of five years from the date of taking over the possession, it may return it to the original land owner or their legal heirs, as the case may be, or to the land bank of the appropriate government.

Whereas under Land Acquisition Act, 1894 the land acquired for public purpose shall be used for the same. Nowhere in the Act places an obligation upon the State to return the land to the original land owner or to the land bank of the appropriate government, if it is not put to use forwhat purpose the land is acquired. When land acquired for a company, it first vests in the State and then transferred to the company on payment of amount or cost of acquisition in accordance with the agreement under section 41. If the acquired land is no longer required by the company itshould not be offered back to the original owner or returned to land bank. the government applies its mind and act in good faith.79 Publication of notification under section 4 is a condition prece- dent for raising objections. The Government may in its discretion in cases coming under section 17(1) and section17(2) dispenses with the requirement of section 5A.

Delay in taking possession of the land nearly 3 years where urgency provision under section 17 has been invoked that would certainly be a factor leading to the conclusion that there was no real urgency and acquisition authorities acted mechanically.81 In Chandramani Sahu v. State of Orissa 82 Court held that delay of one year, six months in making the declaration under section 6 after publication of notifications under section 4(1) defeated the pleas of urgency under section 17(4) of the Act. Under section 17(3A) of the Land Acquisition Act only 80% of the compensation, estimated by the collector is paid to the land owner before taking the possession of the property which is acquired.83 The amount paid or deposited under sub section 3(A) of section 17 shall betaken in to account in final compensation.

Burden of Proving Urgency

The initial burden of proof to show the existence of urgency is on the government. Power has been

exercised arbitrarily lies on the person who alleges malafide exercise of power. Mere allega-

tion that the power is exercised malafide would not be enough, but in support of the said allega- tion specific material should be placed before the Court. The burden of establishing malafide isvery heavy on the person who alleges it.84

: Special Powers for Scheduled Castes and Scheduled Tribes

Under section 41 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act as far as possible, no acquisition of land shall be made in the scheduled area only as a last resort acquisition can be made. In case of acquisition or alienation of any land in the scheduled areas, prior consent of the concerned Gram Shabha or panchayats or the autonomous district councils as the case may be obtained. Where the affected familiesbelonging to the scheduled castes and scheduled tribes are relocated outside the district, then theyshall be paid an additional twenty-five per cent. rehabilitation and resettlement benefits to whichthey are entitled in monetary terms along with one time entitlement of fifty thousand rupees.

6.20: Reference to the Authority

Any person interested in the land which is sought to be acquired not accepted the award, can make an application to the collector to refer the matter, to the Land Acquisition, Rehabilitationand Resettlement Authority for determining the questions relating to : (1) the measurement ofland; (2) the amount of compensation; (3) the person to whom it is payable; (4) the appointmentof the compensation among the persons interested; (5) the rights of rehabilitation and resettle- ment. As a rule the jurisdiction of the Land Acquisition, Rehabilitation and Resettlement Author- ity is limited to the determination of all or any of these above matters. However the respondent may raise an objection to the validity of the application if the application for reference was notmade within the time prescribed in the Act.85 Within the period of thirty days from the date of receipt of application for reference, matter shall be referred to the Land Acquisition, Rehabilita- tion and Resettlement Authority, expressly prohibits the Court from reducing the amount of com-pensation which dealing with the matter referred under section 18. It clearly prohibits the com- pany or local authority to invoke the jurisdiction of the High Court under Article 226 of the Consti-tution to challenge the amount of compensation awarded by the collector to reduce it.92 Claimant may bring a writ petition before High Court questioning the acquisition on the ground that ac-quisition itself is malafide and the burden of establishing malafide is on the person who alleges it.

Reference made under section 18 cannot be dismissed by the Civil Court and the Court isbound to determine the objections raised by the claimant even though he was absent on the dateof enquiry. Sections 20 and 26 of the Act pre-supposes that a fresh determination has to be madeby the Court on the material available.96 If the claimant accepted the compensation without any protest, the reference Court or Land Acquisition, Rehabilitation and Resettlement Authority may reject the reference application but the collector has no power to refuse to make reference, leavingthe question open to be decided by the reference Court.97 Application for reference to civil Courtshall be made within the period of 6 weeks from the date of receipt of notice regarding awardmade, or within 6 months from the date of the collector's award whichever period shall first ex- pire.98 If we compare section 18 of the repealed Land Acquisition Act with section 69 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and ResettlementAct, in the earlier Act reference shall be made to the civil Court and in the latter Act reference shall be made to the Land Acquisition, Rehabilitation and Resettlement Authority. Except this no changewill be seen in between these two Acts.

Land Acquisition, Rehabilitation and Resettlement Authority

Under the present Act for the purpose of speedy disposal of disputes relating to land acquisition, compensation, rehabilitation and resettlement, refer the matter to "the Land Acquisition, Rehabilita- tion and Resettlement Authority", which is constituted under it. One or more authorities constituted

under the Act, for which areas of jurisdiction confirmed by the Act itself. The authority shall consistof one person only and he is appointed by the appropriate government in consultation with the ChiefJustice of High Court. Presiding officer shall be a district judge or has been a district judge or he is a qualified legal practitioner for not less than seven years. For the purposes of its functions under the Act, the authority shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908. All proceedings before the authority shall be deemed to be judicial proceedingsand hence, section 63 of the Act bars the jurisdiction of Civil Courts. No Civil Court (other than High Court under article 226 or article 32 before the Supreme Court of the Constitution) shall have juris-diction to entertain any dispute relating to land acquisition.

6.22 : The Issue of Compensation under the Act

Compensation means anything given to make the things equivalent; a thing given to or make good for loss. The term 'compensation' is used to indicate what constitutes or is regarded as equivalent or recompense for loss or privation.107 On the other hand, constitute sum of money claimed or adjudged to be paid as compensation for loss of injury sustained, the value estimated in money of something lost or with held. The term 'compensation' etymologically suggests theimage of balancing one things against the other.108

Acquisition is a right inherent in every sovereign State to take appropriate private propertybelonging to individual citizens for public use. The right which is described as eminent domain. Article 31(2) of the Constitution prescribes a twofold limit within which such superior right of the State should be exercised. One limitation imposed upon the acquisition or taking possession ofprivate property is that such taking must be for public purpose. The other condition contains a provision for payment of compensation to the manner laid down in the clause.109

After 44th constitutional amendment, though the mass of citizens shall have no longer anyguaranteed right to compensation for the property acquired or requisitioned and legislature shallhave no constitutional obligation to pay any sum amount to the appropriated owner. Two exemp-tions to this general position allowed (a) if the property acquired belongs to an Educational Insti-tutions established and administered by the members of the minority community, law of acquisi-tion must provide for such acquisition, the compensation as would not abrogate the right of mi- nority to establish and administered educational institution (b) if the State seeks to acquire the land which is within the statutory ceiling limit and personally cultivated by the owner, State mustpay compensation which is full market value of the land acquired. Notwithstanding the omission of such constitutionally guaranteed right to compensation, the Court would derive such right fromthe legislative power contained in Entry 42 of List III111 of the Indian Constitution hence, 'Acqui-sition and requisitioning of property' read with the common law doctrine of 'Eminent Domain'.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act empowers the government to acquire land for public purposes or for private companies or public private partnership projects where benefit accrue the general public. The Actis neither a tool in the hands of government to deprive any person from his from his property rightwithout payment of compensation nor a bonanza to a land owner whose land has been acquired. The Act therefore provides a machinery to determine the market value (section 26) of the land as existing on the date of notification under section 11of the Act. Section 27 of the Act mandates that in determining the amount of compensation, the collector shall be guided by the provision as contained in sections 28 and 29 in deciding the value of the compensation. The ultimate duty of the collector is not to conclude by his award but to fix the sum which in his best judgment is the value and which should be offered to the owner.

Common areas and facilities under the Apartment Ownership Act

d) "common areas and facilities" includes —

(1) the land on which the building is located and all casements, rights and appurtenances belonging to the land and the building,

(2) the Foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stair-ways, fire-escapes and entrances and exits of the building,

(3) the basements, cellars, yards, gardens, parking areas shopping centres, schools, garages, building or apartment vacant or occupied by a tenant or any other person, not being an owner, and transferred or proposed to be transferred to the Association of Apartment Owners and stor- age spaces,

(4) the premises for the lodging of janitors or persons employed for the management or the property,

(5) installations of common services, such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, sewerage, etc.,

(6) the elevators, tanks, pumps, motors, compressors, pipes and ducts and in general all appa- ratus and installations existing for common use,

(7) such other common facilities, as may be specially provided for in the Declaration,

(8) all other parts of the property necessary or convenient to its existence, maintenance and safely, or normally in common use;

Sec 5. Common areas and facilities :

(1) Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the Declaration.

(2) The percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in the Declaration shall not be altered without the written consent of all the apartment owners.

Addition or alteration, if any, is to be expressed subsequently in an amended Declaration duly executed and registered as provided in this Act. The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains, and shall be deemed to be conveyed or encumbered with the apartment even though such interest is not expressly mentioned in the conveyance or other instrument.

(3) The common areas and facilities shall remain undivided, and no apartment owner or other person shall bring any action for partition or division of any part thereof, unless the property has been withdrawn from the provisions of this Act, '

(4) Each apartment owner may use the common areas and facilities for the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other apartmentowners.

(5) The work relating to the maintenance, repair and replacement of the common areas and facilities and the making of any additions or improvements thereto shall be carried out in accor- dance with the provisions of this Act and the bye-laws made thereunder.

(6) The Association of Apartment Owners shall have right, to be exercised by the Manager or the Board of Managers on behalf of the Association, with such assistance as the Manager or the

Board of Managers, as the case may be, considers necessary, to have access to each apartment from time to time during reasonable hours, for the maintenance, repair and replacement of any ofthe common areas and facilities therein or accessible therefrom, or for making emergency repairs therein to prevent any damage to the common area and facilities or Lo other apartments.

(7) The Association of Apartment Owners shall, subject to any covenants, conditions or re-strictions if any agreement, have the right, to be exercised by the Manager or the Board of Manag-ers on behalf of the Association with such assistance as the Manager or the Board of Managers, asthe case may be, considers necessary, to transfer ownership, by sale or by lease for thirty years ormore, of any buildings of apartment owned or deemed to be owned as common areas and facili- ties by the Association and occupied by any tenant or any other person not being an owner:

9. Common profits and expenses :

The common profits of the property shall be distributed among, and the common expenses shall be charged to, the apartment owners according to the percentage of the undivided interest inthe common areas and facilities.

Declaration under the Apartment Ownership Act

10. Contents of Declaration :

(1) The Declaration referred to in section 2 shall be submitted in such form and in such manner as may be prescribed and shall contain the following particulars, namely :—

(a) description of the property;

(b) nature of interest of the owner or owners in the property;

(c) existing encumbrance, if any, affecting the property;

(d) description of each apartment containing its location, actual built-up area, number of rooms, immediate common area to which it has access, and any other data necessary for its proper identification;

(e) description of the common areas and facilities;

(f) description of the limited common areas and facilities, if any, stating to which apartments their use is reserved;

(g) value of the property and of each apartment, and the percentage of undivided interest in the common areas and facilities appertaining to each apartment and its owner

(h) such other particulars as may be prescribed.

(2) The Declaration referred to in sub-section (1) may be amended under such circumstances and in such manner as may be prescribed.

13. Bye Laws :

(1) Every property shall be administered in accordance with such bye-laws as may be framed by the Competent Authority with the prior approval of the State Government.

(2) The bye-laws shall provide for the following amongst other mailers, namely :—

(a) the manner in which the Association of Apartment Owners is to be formed, the election of a Board of Managers from among the apartment owners, the number of persons constituting the Board, the number of members of such Board to retire annually, the powers and duties of the Board; the honorarium, if any, of the members of the Board; the method of removal from office ofmembers of the Board; the powers of the Board to engage the services of a Secretary or Manager,delegation of powers and duties to such Secretary or Manager;

(b) method of calling meetings of the apartment owners and the number to constitute a quorum;

(c) election of a President who shall preside over the meetings of the Board and of the Association of Apartment Owners;

(d) maintenance, repair and replacement of the common areas and facilities and payments therefor;

(e) manner of collecting share of the common expenses from the apartment owners;

(f) any other matter considered to be necessary for the administration of the property.

16A. Penalty :

(1) If the owner of any apartment subject to the provisions of this Act, contravenes-

(a) any of the provisions of section 7 or section 8,

(b) any bye-law that may be framed by the Competent Authority, or

(c) any covenant, condition or restriction set forth in the Declaration to which he is subject or a party, or if such owner stands in the way of submitting the properly to the provisions of this Actand does not furnish the particulars or documents as required for execution of Declaration inaccordance with the provisions of section 10A and the rules made under this Act, he shall, at theinstance of the Manager or the Board of Managers on behalf of the Association of the Apartment Owners, an aggrieved apartment owner or, in a proper case, the Competent Authority, on convic-tion before a Magistrate, be liable lo a fine which may extend to rupees one thousand or to a termof imprisonment which may extend to six months or to both, and in case of continuing contraven-tion, to additional fine which may extend to rupees fifty for everyday during which such contra- vention continues after conviction for the first such contravention.

(2) Any contravention punishable under sub-section (1) may, where prosecution lies or is instituted at the instance of, or by, the Manager or the Board of Managers on behalf of the Associationof the Apartment Owners, be compounded by such Association, either before or after the institu- tion of the prosecution, on payment of, for credit lo its fund, such sum as it may think fit.

(3) The provisions of this section shall apply without prejudice lo those of section 6, section 15 and section 16.

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