

Bengal Land Records Maintenance Act, 1895

8 of 1895

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PREAMBLE

An Act to provide for the Maintenance of Records of Tenant-rights in Bengal, and for the recovery of the cost of Cadastral Surveys and Settlements

WHEREAS it is expedient to provide for the maintenance of records of tenant-rights and of settlement records in Bengal,¹ and alternative method of recovering the cost of cadastral surveys and settlements;

It is hereby enacted as follows:-

- 1. For Statement of Objects and Reasons, see Calcutta Gazette, 1895, Pt IV, p. 4.

PART 1 PRELIMINARY

1. Short title :-

(1) This Act may be called The Bengal Land Records Maintenance Act, 1895.

Extent.-

(2) It shall come into force only in Districts or parts of Districts of which a field survey and record-of-rights have been made Chapter X of the Bengal Tenancy Act, 1885 or under any other law for the time being in force, and to which the ¹[State] Government may, from time to time, extend it by an order published in the ²[Official Gazette];

Commencement-And thereupon this Act shall commence and take effect in the Districts or parts of Districts named in such order on the day which shall be in such order provided for the commencement thereof.]³

1. Substituted by A.L.O.

2. For Statement of Objects and Reasons, see Calcutta Gazette, 1895, Pt IV, p. 4.

3. Substituted by A.O. for Calcutta Gazette.

2. Interpretation clause :-

(1) In this Act all words and expressions defined in the Bengal Tenancy Act, 1885, shall have the meanings attributed to them, respectively, in that Act, and the word "addition" shall have the meaning attributed to it in the Indian Registration Act, 1877.]¹

(2) By the term "record-of-rights" shall be understood the settlement record of tenant-rights called the khatian or such new editions of such record as may be prepared under Rules made under this Act, or such other corresponding record of tenant-rights as may be declared by the Board of Revenue]² to form the record-of-rights for any District or part of a District. A record-of-rights includes entries duly made in a Register of Mutations.

1. Act 3 of 1887 repealed and re-enacted by Act 16 of 1908. This

reference is to be construed as a reference to clause (1) of Section 2 of the latter Act, vide the General Causes Act, 1897, Section 8.

2. Substituted B. & O. Act 1 of 1913.

PART 2 REGISTRATION OF MUTATIONS

3. Registrars of Mutations :-

The Sub-Registrars appointed under the Indian Registration Act, 1877 ¹ shall be Registrars of Mutations under this Act.

1. Act 3 of 1887 repealed and re-enacted by Act 16 of 1908. This reference is to be construed as a reference to clause (1) of Section 2 of the latter Act, vide the General Causes Act, 1897, Section 8.

4. Registers :-

The Registrar of Mutations shall keep such registers as shall, from time to time, be prescribed by the ¹[State] Government, including, for every village within the limits of the sub-distinct, a Register of Mutations, in which there shall be recorded changes affecting the record-of-rights of that village, and containing such particulars as the Board of Revenue]² may, from time to time, with the sanction of the ¹[State] Government, prescribe.

1. Substituted by A.L.O.

2. Substituted B. & O. Act 1 of 1913.

5. Landlords statements :-

(1) Whenever the ¹[State] Government shall issue a notification in the ²[Official Gazette] to that effect, every landlord shall, within the period prescribed in the notification, file in the office of the Registrar of Mutations, within the sub-district in which his tenants land is situated, a statement, in a form to be prescribed by the

¹[State] Government, showing truly, to the best of his knowledge and belief, the changes, if any, which have taken place in his tenants rights by reason of transfer or succession, since the record-of-rights was prepared, or since the last statement was filed.

(2) The Collector of the District shall cause such notification to be published by affixing a copy thereof in some conspicuous place in the office of such Collector, in every Civil Court, in every police-station, and in the office of every Sub-divisional Officer within the District, and in any other manner which the ¹[State] Government may from time to time direct.

1. Substituted by A.L.O.

2. Substituted by A.O. for Calcutta Gazette.

6. Notice of transfer of succession to be given to Registrar of Mutations :-

Every tenure-holder, raiyat at fixed rates and occupancy raiyat, who transfer his tenure or holding, or any part thereof, and every person claiming to be in possession of any tenure or holding as a tenure-holder, raiyat at fixed rates, or occupancy raiyat in consequence of a transfer or of intestate or testamentary succession, shall within four months from the date upon which he gave or took possession as the case may be, give notice of the fact to the Registrar of Mutations within whose sub-district the whole or some portion of the land to which the notice relates is situate, at his office:

Provided that a notice under this Section is receivable although the prescribed period has elapsed:

Provided further that when any person has duly given notice under this Section, all other persons are released from the obligation of giving notice in respect of the same transfer or succession:

Provided further that when an instrument effecting a transfer of tenant-right has been registered under the provisions of the Indian Registration Act, 1877, all persons are released from the obligation of giving notice under this section in respect of the same transfer.

7. The contents of the notice :-

The notice shall contain-

(a) in the case of a transfer the names of the transferor and the transferee or in the case of a succession, the name of the deceased and his successor,

(b) a specification of the nature of the interest transferred or acquired;

(c) the survey number of the lands as entered in the record-of-rights, and

(d) such further particulars as the ¹[State] Government may from time to time, prescribe.

1. Substituted by A.L.O.

8. Duty of Registrar on receipt of notice from transferor or transferee :-

(1) The Registrar of Mutations shall, on receipt of a notice under Section 6, whether given within the prescribed period or not, from a transferor, or transferee, ascertain if both the transferor and the transferee, or in the case of the death of either party since the transfer, if the one party and the representative of the other party admit the transfer, or in the case of the death of both parties if their respective representatives admit the transfer, and if both

transferor or transferee or their respective representatives admit the transfer he shall, after satisfying himself as to the identity of the persons appearing before him, cause the following particulars to be endorsed on the notice (that is to say),-

(a) the signature and addition of every person admitting the transfer; and if such transfer has been admitted by the representative or agent of any person, the signature and addition of such representative or agent,

(b) any payment of money or delivery of goods made in the presence of the Registrar of Mutations in reference to the transfer, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such transfer, and shall affix the date and his signature to these endorsements, and shall register the transfer in the Register of Mutations in such manner as the 1[State] Government shall from time to time by rule prescribe.

(2) If necessary, the Registrar of Mutations may issue a summons for the attendance of either or both the transferor and transferee, or their respective representatives, either simultaneously or at different time, at his office:

Provided that, in lieu of issuing a summons, he shall either himself go and examine, or issue a commission for the examination of any person who is-

(a) exempt by law from personal appearance in Court,

(b) unable by reason of bodily infirmity, without risk or serious inconvenience to attend at the office, or

(c) in jail under Civil or Criminal process.

9. Duty of Registrar on receipt of notice from successor :-

The Registrar of Mutations on receipt of a notice under Section 6, whether within the prescribed period or not, from a person claiming by succession, shall, after satisfying himself as to the identity of such person and causing the signature and additions of such person to be endorsed on the notice by a notice affixed in a conspicuous place, and by beat of drum, in the village in which the land claimed is situated, call upon any person who desires to do so to appear before him at his office within one month from the date of the last-mentioned notice, and deny the succession and if within that period no one appears and denies the succession, he shall endorse a statement of the fact on the notice, affixing the date and his signature to the endorsements, and shall register the succession in the Register of Mutations in such manner as the ¹[State] Government shall from time to time by Rule prescribe.

1. Substituted by A.L.O.

10. Appearance by agent :-

Notwithstanding anything contained in Section 8, 9 and 12, any person may attend at the office of the Registrar of Mutations by agent duly authorised by power-of-attorney executed and authenticated in manner hereinafter mentioned.

11. Powers-of-attorney :-

(1) For the purposes of the last preceding section, the powers-of-attorney here mentioned shall alone be recognized,-

(a) if the principal at the time of executing the power-of-attorney resides in ²[a Part A State or a Part C State], a power-of attorney executed before and authenticated by any Magistrate or the Registrar or Sub-registrar appointed under Section 6 of the Indian

Registration Act, 1877 within whose district or sub-district the principal resides.

(b) if the principal at the time aforesaid does not reside in ²[a Part A State or a Part C State], a power-of-attorney executed before and authenticated by a notary public, or any Court, Judge, Magistrate, Indian ³[***] Consul or Vice-Consul] or representative ⁴[***] of the ¹[State] Government:

Provided that the following persons shall not be required to attend at any office or Court for the purpose of executing any such power-of-attorney as is mentioned in clause (a) of this Section:-

Persons exempted by law from personal appearance in Court;

persons who by reason of bodily infirmity are unable, without risk or serious inconvenience, so to attend; and persons who are in jail under Civil or Criminal process.

(2) In every such case the officer, if satisfied that the power-of-attorney has been voluntarily executed by the person purporting to be principal, may attest the same without requiring his personal attendance at the Office or Court. To obtain evidence as to the voluntary nature of the execution, the officer may go to the person purporting to be the principal and examine him or issue a commission for his examination. Any power-of-attorney mentioned in this Section may be proved by the production of it without further proof, when it purports on the face of it to have been executed before and authenticated by the officer hereinbefore mentioned in that behalf.

1. Substituted by A.L.O.

2. Substituted by A.L.O, for "a Province of India".

3. Words "or British" omitted by A.L.O.

4. Words "of Her Majesty or" omitted by ibid.

12. Law as to summonses and commissions :-

The law for the time being in force as to summonses, commissions before Civil Courts shall mutatis mutandis, apply to any summons by commission issued, and any person summoned, under this Act.

13. Reasons for refusal to register to be recorded :-

Whenever a Registrar of Mutations, after receipt of a notice under Section 6, does not register the transfer or succession in respect of which it is given, he shall make an entry of the fact and state his reasons in such manner as the ¹[State] Government may from time to time prescribe.

1. Substituted by A.L.O.

14. Procedure on denial of transfer :-

If any of the person purporting to have signed the notice, or any one mentioned therein as transferor or transferee or in the case of the death of either, if his representative denies the transfer, or if any such person appears to be a minor, an idiot, or a lunatic, or if any person, where the claim is by succession, appears before the Registrar on issue of a notice under Section 9 and denies the succession the Registrar of Mutations shall refuse to register the mutation.

15. Procedure when transferors name not in record-of-rights :-

If the name of a transferor, or of a deceased person through whom

succession is claimed, inserted in a notice given under Section 6 is not recorded in the record-of- rights as that of the person in possession of the land specified in the notice, the Registrar of Mutations shall, without registering the transfer or succession, as the case may be by a notice, affixed in a conspicuous place, and by beat of drum, in the village in which the land claimed is situated, call upon any person who desires to do so to appear before him at his office within one month from the date of the last-mentioned notice and deny that the alleged transferor, or deceased person through whom succession is claimed, was at the time of the alleged transfer in possession of the land specified in the notice.

And if no person within the prescribed period so appears and denies, the Registrar of Mutations shall, if the other provisions of the Act are complied with, record the transfer or succession, the subject of the notice, in the Register of Mutations.

16. Appeal against refusal to register :-

(1) When a Registrar of Mutations has made an order refusing to register a transfer or succession an appeal shall lie within thirty days from the date of the order against such order to the Collector of the District to whom such Registrar of Mutations is subordinate; and the Collector may, after taking such evidence as he thinks necessary reverse or alter such order, and if the Collector directs the transfer or succession to be registered, the Registrar of Mutations shall obey such order and such registration shall take effect as if the transfer or succession had been registered when the notice was first given under Section 6.

(2) No appeal shall lie from any order of a Collector passed under this Section.

17. Registrar to give receipt for notice and, if required, copy of entries in register :-

The Registrar of Mutations shall give to the person giving a notice under Section 6, a receipt therefor, and shall, upon his application, grant to him, free of charge, a copy of the entries made in Register of Mutations in pursuance of such notice.

18. Registrar to allow inspection and to give certified copies of entries in Register :-

(1) On payment of the prescribed fees the Register of Mutations shall be open to inspection by any person applying to inspect the same, and a copy of any entry therein shall be given to any person applying therefor.

(2) Copies given under this section shall be signed and sealed by the Registrar of Mutations and shall be admissible for the purpose of proving the contents of the original entry.

19. Fees to be fixed by the State Government :-

(1) The ¹[State] Government shall from time to time prepare tables of fees payable-

(a) for the registration of mutations-

(i) within the prescribed period,

(ii) after the prescribed period,

(b) for copies of entries in the Register of Mutations,

(c) for inspecting of Register of Mutations.

(d) for notices, processes and commissions given or issued under this Act,

(e) for such other matters as appear to the ¹[State] Government necessary to effect the purposes of this Act, and may from time to time alter such tables.

(2) Tables of fees so payable shall be published in the ²[Official Gazette], and a copy thereof in English and the vernacular language of the district, shall be exposed to public view in the office of every Registrar of Mutations.

(3) All fees for the registration of mutations shall be payable at the time when the notice is given under Section 6.

1. Substituted by A.L.O.

2. Substituted by A.O. for "Calcutta Gazette".

20. Fees under Tenancy Act :-

The fees payable to the Collector under Section 15 and 18 of the Bengal Tenancy Act, 1885, may be paid to the Registrar of Mutations, when notice is given under Section 6 and such payment shall be held to be payment to the Collector, and the Registrar of Mutations shall forthwith transmit all fees so paid to the Collector, and such notice to the Registrar of Mutations shall be held to be a notice to the Collector under Section 15 and 18 of the Bengal Tenancy Act, 1885.

21. Notice by non-occupancy or under-raiyats :-

Any non-occupancy raiyat or under-raiyat, if he thinks fit, may give any notice which a tenure-holder, raiyat at fixed rates and occupancy raiyat is bound to give under Section 6, and if he gives

such notice, the provisions of this Act, as far as they are applicable, shall thereupon apply.

22. Registration of instruments effecting transfer of tenant-right and simultaneous registration of mutation :-

A Sub-Registrar, registering an instrument effecting a transfer of tenant, or under the provisions of Section 64 and 65 of the Indian Registration Act, 1877, receiving a memorandum of a transfer of tenant right, shall, as Registrar of Mutations, make an entry in the Register of Mutations as if he had received a notice under Section 6.

23. Disability on failure to give notice :-

No person bound to give notice under Section 6 shall, after the period therein mentioned, be entitled to obtain a decree for, or recover, the rent of any land the subject of the transfer or succession until he has given such notice and if the defendant denies that the notice has been given, or if the Court thinks fit, it may require him to file a certified copy of the entry in the Register of Mutations relative to such land, or to adduce evidence to the satisfaction of the Court that the notice was duly given.

(2) No tenant bound to give notice under Section 6 shall, after the period therein mentioned, in any suit in which his landlord is plaintiff and he is a defendant, be entitled to adduce evidence that he is a tenure-holder, raiyat at fixed rates or raiyat with a right of occupancy in the land held by him until he has given such notice, but the Court in which any such suit is tried shall afford the defendant sufficient time to enable him to give such notice.

24. Penalty for omission to give notice under Section 6 :-

Whoever voluntarily or negligently omits to give, within the prescribed time, notice under Section 6, shall be liable to such fine, not exceeding fifty rupees, as the Collector of the District may see fit to impose.

25. Penalty for omission to file statement under Section 5 :-

After a notification has been issued under Section 5, whoever voluntarily or negligently omits to file, within the period therein specified, the required statement, shall be liable to such fine, not exceeding one hundred rupees, as the Collector of the District may see fit to impose:

Provided that no person shall be fined under this or the last preceding Section who at any time prior to the institution of proceedings thereunder, or in the discretion of the Collector of the District at any time after such institution, has filed the statement required by Section 5 or give a notice required by Section 6.

26. Penalty for omitting to make entry or making incorrect entry in register with intent to injure :-

Every Registrar of Mutations and every person employed in his office for the purposes of this Act, who being charged with the duty of making any entry in the Register of Mutations, voluntarily omits to make such entry, or makes any entry therein which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely, that he may thereby cause injury, as defined in the Indian Penal Code, to any person, shall be punished with imprisonment for term which may extend to two years or with fine or with both.

27. Penalty for certain other offences, Making false statements before Registrar of Mutations, False personation-Abetment of certain offences :-

Whoever commits any of the following offences shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both:

(a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any Registrar of Mutations in any proceeding or inquiry under this Act;

(b) falsely personates another, and in such assumed character presents any notice or makes any admission or statement, or causes any summons or commission to be issued, or does any other act in any proceeding or inquiry under this Act;

(c) abets, within the meaning of the Indian Penal Code, anything made punishable under this or the last preceding Section.

PART 3 RECOVERY OF EXPENSES OF SURVEY AND PREPARATION OF A RECORD OF RIGHTS

28. Recovery of expenses of initial survey, etc :-

It shall be lawful for the ¹[State] Government, instead of proceeding under Section 114 of the Bengal Tenancy Act, 1885 recover from all or any of the proprietors, landlords, tenants and rent free owners and occupiers in any District or part of a District, either in one year or several years, and in the manner specified in the Section following, their shares of all the expenses declared to by the ¹[State] Government to be recoverable from proprietors, landlords, tenants and rent-free owners and occupiers, which have been incurred in making a survey, and record-of-rights and a settlement of rents under Chapter X of the Bengal Tenancy Act, 1885 such costs not having been incurred for the purposes of a settlement of land-revenue.

1. Substituted by ALO.

29. Area, rate and date of recovery of expenses :-

The ¹[State] Government may from time to time determine the total expenses which have been incurred in any District or part of a District in making a survey and record-of-rights, and the amounts (in such proportions as the ¹[State] Government may from time to time determine) which shall be paid by the proprietors, landlords, tenants, and rent-free owners and occupiers respectively in such District or part of a District, and the date from which the expenses aforesaid shall be, recovered; and may specify the rate per acre to be paid by the said proprietors, landlords, tenants and rent-free owners and occupiers.

1. Substituted by ALO.

30. Payment of expenses by proprietors :-

The amount due from proprietors shall be paid together with such instalment of land-revenue as the ¹[State] Government may direct, and arrears shall be recoverable under the laws² for the time being in force for the recovery of public demands.

1. Substituted by ALO.

2. Substituted A.L.O, for the word "Crown".

31. Payment of expenses by tenants and rent-free owners and occupiers :-

The amount due from tenants and rent-free owners and occupiers shall, subject to any orders passed by the ¹[State] Government under Section 28, be paid by them to the Settlement Officer, on tender of such extract from the record-of-rights as they may be

entitled to receive.

Arrears shall be recoverable under the law for the time being in force for the recovery of public demands.

1. Substituted by ALO.

32. Recovery from successors-in-interests :-

When any proprietor, land lord, tenant or rent-free owner or occupier liable to pay any portion of the expenses under an order passed under this Part since such expenses were incurred, has died or has transferred, in whole or in part, his interest in any land on account of which he may have become liable, and such portion of the expenses remains unpaid, it shall be lawful for the Collector to recover the said expenses; or any portion thereof, from the person in possession of such interest or portion thereof.

Such expenses shall be recoverable under the laws]¹ for the time being in force for the recovery of public demands.

1. Substituted A.L.O, for the word "Crown".

PART 4 MISCELLANEOUS

33. Registrars of Mutations to be public servants and their records are public records :-

Every Sub-Registrar appointed under this Act to be a Registrar of Mutations, and every person appointed temporarily to discharge the duties of any such office, shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code, and all official records and papers kept by any such officer under this Act shall be held to be public records and the property of the
¹[Government].

1. Substituted by A.L.O.

34. Appeals :-

Every order of a Registrar of Mutations affecting any entry in the Register of Mutations shall be appealable for a period of one month from the date thereof to the Collector of the District.

No appeal shall lie from any order of a Collector passed under this Section.

35. State Government may vest Officer with special appellate powers :-

The ¹[State] Government may from time to time vest any Officer other than the Collector of the district with special appellate powers under this Act: and every officer so vested shall be competent to hear and decide any appeal which the Collector of the district is competent to hear and decide under this Act.

1. Substituted by A.L.O.

36. Power to make Rules for selection, etc., of Sub-Registrars :-

(1) The ¹[State] Government or the Board of Revenue, with the sanction of the ¹[State] Government, may, from time to time, make, repeal and alter Rules consistent with this Act-

(a) Regarding the appointment, control, discipline and payment of all Registrars of Mutations and their establishment;

(b) prescribing the manner of making entries of mutations in the record-of-rights, preparing new editions of such record and re-publishing them from time to time, or otherwise making them available for public information;

(c) regarding the distribution of the expenses incurred under Part III, and

(d) generally for the purpose of giving effect to the provisions of this Act.

(2) The provisions of Section 190 of the Bengal Tenancy Act, 1885, shall apply to Rules made under clauses (b), (c) and (d).

1. Substituted by A.L.O.