

Bihar Privileged Persons Homestead Tenancy Act, 1947

4 of 1948

[17 January 1948]

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Bihar Privileged Persons Homestead Tenancy Act, 1947

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An Act to make better provisions on certain subjects relating to the law of Landlord and tenant in respect of Homestead held by certain classes of persons in Rural Areas of State of Bihar. Whereas it is expedient to make better provisions on certain subjects relating to the law of landlord and tenant in respect of homestead held by certain classes of persons in rural areas of the State of Bihar. It is hereby enacted as follows:- 1. Published in Bihar Gazette dated (Ex. Ord.) 18.2.1948.

1. Short Title, Extent And Commencement :-

(1) This Act may be called the Bihar Privileged Persons Homestead Tenancy Act, 1947.

(2) It extends to the whole of the State of Bihar.

(3) It shall come into force on such date]1 as the State Government may, by notification, appoint.

1. Act came into force on 25th February, 1948 vide Notification No. 1591-III-II-48, dated 21.2.1948.

2. Definitions :-

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

(a) "building" includes a house, shed, hut and any other structure whether of masonry bricks, wood, mud, metal, bamboo, khar or any other material but does not include the land on which it stands;

(b) "Collector" includes any officer appointed by the State Government to discharge all or any of the functions of a Collector under this Act;

(c) "holding" means a parcel of homestead held by a privileged tenant and forming the subject of a separate tenancy;

(d) "homestead" means any land which is held on lease or used with the consent, express or implied, of the landlord for residential purposes and includes any building erected thereon, together with any Sahan and Bari appurtenant thereto;

(f) "mahajan" means a person whose business is money lending;

(g) "permanent tenancy" means a tenancy which is heritable in the same manner as any other immovable property and which is transferable subject to the provisions of this Act;

(h) "prescribed" means prescribed by Rules made under this Act;

1[(i) "privileged persons" means a person-

(a) who is not a proprietor, tenure-holder, under tenure-holder or Mahajan; and

(b) who, besides his homestead, holds no other land or holds any such land not exceeding one acre;

but does not include any person who has come into possession of the homestead land in contravention of the provisions of Sec. 20 of the Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949 (Bihar Act XIV of 1949) or Section 46 of the Chotanagpur Tenancy Act, 1908 (Bengal Act VI of 1908) or Section 49-C of the Bihar Tenancy Act, 1885 (Act VIII of 1885.)"]

1. Substituted by Amdt. Act 11 of 1989.

2A. Act To Apply Notwithstanding Contrary To Provisions In Other Enactments :-

1[The provisions of this Act shall have effect, notwithstanding anything contained to the contrary in any law for the time being in force.]

1. Inserted by Act 42 of 1951.

3. Act Not To Apply To Certain Lands, Buildings Or Areas :-

This Act shall not apply to-

(a) any land or building, residential or otherwise-

(i) appertaining to an industrial establishment;

(ii) vested in the Government or a local authority; and

(b) any land situated within-

(i) any area which has been, or may hereafter be, constituted a municipality or notified area under the provisions of the Bihar and Orissa Municipal Act, 1922 (B. & O. Act VII of 1922) or a Union Committee constituted under Section 38 of the Bihar and Orissa Local Self-Government Act of 1885 (Bengal Act III of 1885);

1[(ii) vested in the Government except homestead deemed to have been acquired by the State Government under sub-section (2) of Section 17A, or a local authority;

(iii) any other area which is declared by the State Government by notification issued in this behalf to be a place of business or fair;

2[Provided that if any area in which a privileged person or a privileged tenant has acquired any right in his homestead under this Act, is subsequently converted into an area mentioned in sub-clause (1) of clause (b), the privileged person or the privileged tenant, as the case may be, shall not be divested or deprived of his

right in the homestead.]

1. Substituted by Act 9 of 1970.
2. Inserted by Act. 13 of 1973.

4. Privileged Tenant To Have Permanent Tenancy In His Holding :-

Subject to the payment of such rent as may be agreed upon between a privileged tenant and his landlord, or where there is no contract or no valid contract in respect of rent or where the rent contracted is alleged to be unfair or inequitable, such rent as may be fixed by the Collector under the 1[proviso to sub-section (3) of Section 17-A], a privileged tenant shall have a permanent tenancy in the homestead held by him at any time continuously for a period of one year.

1. Substituted by Amdt. Act, 11 of 1989.

5. Privileged Tenant Ejected From Homestead Within One Year Before The Date Of Commencement Of The Bihar Privileged Persons Homestead Tenancy (Amdt.) Act, 1952 To Be Deemed To Have Held It On Such Date Continuously For A Period Of One Year :-

(1) if any privileged tenant has been ejected by his landlord from his homestead or any part thereof, within one year before the date of the 1commencement of the Bihar Privileged Persons Homestead Tenancy (Amendment) Act, 1952 (Bihar Act XXIII of 1952)] otherwise than in due course of law, such tenant shall, for the purposes of Section 4, be deemed to have held such homestead or part thereof, as the case may be, continuously for a period of one year before the 1[commencement of the Bihar Privileged Persons Homestead Tenancy (Amdt.) Act, 1952] and he may apply to the Collector for the restoration of his possession over the homestead or part thereof from which he has been so ejected.

2[(2) The Collector may, on receipt of an application under sub-section (1) or on his own motion, after making such enquiry as he deems fit, order that the Privileged tenant shall be put in possession of the homestead or part thereof, from which he has been so ejected.

1. Substituted by Act, 23 of 1952 for "commencement of this Act".
2. Substituted by Act, 33 of 1954.

6. Omitted :-

7. Omitted :-

8. Grounds On Which A Privileged Tenant May Be Ejected :-

(1) A privileged tenant shall be liable to ejectment on the following grounds and not otherwise, namely-

(a) on the ground that he has used the holding or any part thereof in a manner which renders the holding unfit for the purposes of the tenancy.

(b) on the ground that he has failed to pay the rent of the holding for two years:

Provided-

firstly, that no privileged tenant shall be so ejected except in execution of an order for ejectment passed by the Collector 1[x x x]

secondly, that no such order passed on the ground referred to in clause (b) shall be executed, if the full amount of the arrears of rent together with interest, if any; or where there has been a decree for such arrears, the amount payable under such decree is deposited with the Collector within three months from the date on which the order was signed;

thirdly, that before executing an order for ejectment, the Collector shall grant such time as he may consider reasonable to the privileged tenant for removing the materials of the building, if any, erected by the Privileged tenant on such holding or any part thereof;

2[fourthly, that no privileged tenant shall be ejected unless he holds at least one-tenth of an acre, being land in the village in which his homestead is situate, which is, in the opinion of the Collector suitable for erecting a building for residential purpose.

(2) The following shall not be deemed to render any holding unfit for the purposes of the tenancy, namely-

(a) the planting of trees and bamboos and growing of crops on a portion of the holding;

(b) the manufacture of bricks and tiles for domestic purposes of the privileged tenant and his family; and

(c) the digging of wells intended to provide supply of water for drinking or for domestic purposes of the privileged tenant and his family.

(3) & (4) [Deleted by Amdt. Act 11 of 1989.]

(5) If a privileged tenant has been ejected by his landlord 3[or any other person] from his homestead or any part thereof, otherwise

than in accordance with the provision contained in sub-section (1), then the tenant may apply to the Collector for restoration of his possession over the homestead or part thereof from which he has been so ejected.

4[(6) The Collector may on receipt of an application under sub-section (5), or on his own motion, after making such enquiry as he deems fit, order that privileged tenant shall be put in possession of the homestead or part thereof from which he has been so ejected.]

5[(7) If a privileged tenant is threatened with unlawful ejectment from his tenancy or any portion thereof by his landlord, the Collector may, of his own motion or on application made in this behalf by the privileged tenant initiate a proceeding for preventing the landlord from ejecting the privileged tenant, and may, after hearing the parties, for which due notice shall have been given to them or even after ex-parte hearing in cases of emergency, by an order, giving reasons therefor in writing, restrain the landlord from ejecting the privileged tenant;

Provided that where an ex-parte order has been made, the Collector shall, as soon thereafter as possible hear, the parties after giving due notice to them and may, for reasons to be recorded in writing confirm the order but, if after such hearing he finds that there is no reasonable grounds for such owner he will set aside the same and reject the prayer.

(8) If the person against whom an order has been made under sub-section (6) fails to carry out the order of the Collector within such time, if any, as may be specified in the order: or if the person against whom an order has been made under sub-section (7) disobeys that order, he shall be punishable with imprisonment which may extend to six months or with fine which may extend to one thousand rupees or with both.

(9) An offence under sub-section (8) shall be cognizable for which any Police office may arrest without warrant.

(10) No court shall take cognizance of an offence punishable under sub section (8) except with the previous sanction of the Collector.

Explanation.-For the purpose of sub-sections (5) and (7) landlord includes the person under whom the privileged tenant held his homestead prior to its acquisition by the State Government under sub-section (2) of Section 17A.]

1. Omitted by Amdt. Act 11 of 1989.

2. Inserted by Act 23 of 1951.

3. Inserted by Amdt. Act, 11 of 1989.

4. Inserted by Act 42 of 1951.

5. Inserted by Act 13 of 1973.

9. Restriction On Transfer Of Privileged Tenants Right :-

No transfer made by a privileged tenant of his right in his holding or in any portion thereof, by private sale, gift, will, mortgage, lease or any contract or agreement shall be valid to any extent except as provided in Sections 10 to 17.

10. Subletting By Privileged Tenant :-

A privileged tenant may sublet his holding or any portion thereof to any privileged person to use it for residential purposes.

11. Usufructuary Mortgage By Privileged Tenant :-

(1) A privileged tenant may enter with any privileged person into a complete usufructuary mortgage in respect of his holding or any part thereof for any period not exceeding seven years:

Provided that the mortgage so entered into shall be registered under the Indian Registration Act, 1908 (XVI of 1908).

(2) A privileged tenants power to mortgage, his holding or any part thereof shall be restricted only to one form of mortgage, namely, a complete usufructuary mortgage.

(3) In this Section the expression complete usufructuary mortgage means a transfer by a privileged tenant of the right of possession in his holding or any part thereof and in any building erected by him thereon, for the purpose of securing the payment of money or the return of grains 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.

12. Transfer By Way Of Private Sale, Gift Or Will To Be Made With Permission Of Collector :-

A privileged tenant may with the written permission of the Collector transfer his holding or any portion thereof by way of private sale, gift or will to any privileged person to use it for residential purposes.

13. Power Of Collector To Eject Mortgagee For Wilful Neglect To Pay Rent Of Mortgaged Land :-

(1) If the mortgagee of a holding or any part thereof under Section 11 is legally liable to pay the rent of mortgaged property to the landlord and fails to do so, the mortgagor may deposit it with the Collector the arrears of rent together with the costs necessary for the transmission of the same to the landlord and may apply to the Collector for the ejectment of the mortgagee and the restoration of the mortgaged property to the mortgagor.

(2) On receipt of such an application the Collector, after making such enquiry as he thinks fit, may, if he is of the opinion that the mortgagee has wilfully neglected to pay the amount of rent in arrear, eject the mortgagee and restore the mortgaged property to the mortgagor, and the mortgagee shall thereupon be deemed to have terminated.

(3) The Collector shall cause to be transmitted to the landlord any sum deposited under sub-section (1).

14. Transfer In Contravention Of Section 9 Not To Be Recognised By Courts :-

No transfer by a privileged tenant in contravention of the provisions of Section 9 shall be registered or in any way recognised as valid by any Court, Civil Criminal or Revenue.

15. Powers Of Collector To Set Aside Improper Transfers :-

(1) If a transfer of his holding or any portion thereof is made by a privileged tenant in contravention of the provisions of Section 9 and if a transferee takes possession of the holding or any portion thereof in pursuance of such transfer, the Collector may, of his own motion or on an application made in that behalf, after recording an order in writing, eject the transferee from the transferred property: Provided that the transferee whom it is proposed to eject is given an opportunity of showing cause against the order of ejectment.

(2) (a) When the Collector has passed an order under sub-section (1), he shall pass a further order restoring the transferred property to the transferor or to his heir or legal representative.

(b) If the transferor or his heir or legal representative cannot be found within six months from the date of the order of restoration passed under clause (a) or is unwilling to take possession of the transferred property, the Collector may declare, the right of settlement of such property to be vested in the landlord:

Provided that before making such a declaration, the Collector shall grant such time as he considers reasonable to such transferor or his

heir or legal representative, as the case may be, for removing the materials of the building, if any, erected by him on such property.

16. Section 16 :-

17. Stay Of Execution Of Decree :-

If an application for the sale of privileged tenants right in his holding is made in execution of a decree against such privileged tenant in respect of the rent of such holding, the Court executing the decree shall allow the privileged tenant reasonable time in which to pay the amount due, and if an application is made to the Collector under sub-section (1) of Section 13 before the execution of the decree, the Collector shall inform the Court that such application has been made, and the decree shall not be executed until the Collector has disposed of the application.

17A. Privileged Tenant Having Permanent Tenancy In His Homestead To Hold It Under The State Government :-

1[(1) Subject to the other provisions contained in this Act, a privileged tenant having permanent tenancy in homestead under Section 4 shall hold the homestead under the State Government and the amount of rent payable to the landlord by the privileged tenant in respect of the homestead shall be payable by the privileged tenant to the State Government.

(2) The homestead which a privileged tenant holds under the State Government under sub-section (1) shall, for the purpose of payment of compensation to the landlord under whom he held it, be deemed to have been acquired by the State Government under this Act.

(3) The amount of compensation payable to the landlord by the State Government under sub-section (2) shall be ten times of the rent payable to the landlord by the privileged tenant in respect of the homestead which shall be paid to the landlord by the State Government in cash in one instalment:

Provided that where there is no contract or no valid contract between landlord and his privileged tenant as to the rent payable for the homestead or where the rent contracted is, in the opinion of the Collector unfair or inequitable, the Collector shall settle fair and equitable rent of the homestead after making such enquiry as he may deem fit and after taking into consideration the importance of the area where such homestead is situated and the rent, if any, prevailing in that area for other similar homesteads, before the

amount of compensation payable to the landlord by the State Govt. is assessed.

2[(4) The rent settled by the Collector under the proviso to sub-section (3) shall always be in cash and take effect from such date as the Collector may fix;

(5) The rent which was payable to the State Government by the privileged tenant under sub-section (1) or the rent settled by the Collector under the proviso to sub-section (3) shall be the rent fixed in perpetuity;

(6) The Collector on his own motion, or on any information received by him that the rent fixed by the Circle Officer is not proper, may review the orders passed by the Circle Officer regarding the fixation of such rent and may pass such orders redetermining the rent, as he deems fit.

1. Inserted by Act. 9 of 1970.

2. Inserted by Amdt. Act 11 of 1989.

18. Orders Under This Act To Be Final :-

1[The orders passed under this Act shall be final. Subject to the provisions of Section 21, all orders passed by the Collector in any proceeding under this Act shall be final, and no suit shall lie in any Civil Court to vary or set aside any such order except on the ground of fraud or want of jurisdiction.

1. Substituted by *ibid*.

19. Provisions To Have Effect Notwithstanding Any Other Law :-

The provisions of this Act shall have effect notwithstanding anything contained in any other law or anything having the force of law; and anything in any such law or anything having the force of law which is inconsistent with any of the provisions of this Act, shall, to the extent of inconsistency, be deemed to have been repealed.

20. Power Of The State Government To Make Rules :-

(1) The State Government may make Rules not inconsistent with this Act for carrying out the purposes of the Act.

(2) In particular and without prejudice to the generality of the foregoing power, the State Government may make Rules with

respect to the following matters-

(a) the form of applications under sub-section (1) of Section 5, sub-section (1) of Section 6, first proviso to sub-section (1) of Section 8, sub section (1) of Section 13 and sub-section (1) of Section 15, and the particulars to be contained in such applications; (b) the procedure to be followed in dealing with applications referred to in clause (a) and in inquiries about matters arising out of such applications.

21. Power Of The Collector Of The District To Call For And Examine Records :-

1[Notwithstanding anything to the contrary contained in any judgement, decree or order of any Court or authority; the Collector of the district may on his own motion or on the application of any party, or on reference being made by any subordinate authority, call for and examine record of any case decided or proceeding taken by the Collector under the Act for satisfying himself as to the regularity of the proceeding or to the correctness, legality or propriety of an order passed by the Collector under the Act in the case or proceeding, and may after, allowing the parties concerned opportunity of being heard, direct that the case or the proceeding be re opened and disposed of afresh in accordance with the provisions of this Act.

1. Inserted by Amdt. Act 11 of 1989.

22. Power Of The State Government To Give Directions :-

The State Government may, from time to time, give to the Collector of the district such directions of general or special nature as the State Government may deem fit."