

Chotanagpur Tenancy Act, 1908

6 of 1908

[11 November 1908]

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Chotanagpur Tenancy Act, 1908

6 of 1908

[11 November 1908]

An Act to amend and consolidate certain enactments relating to the law of Landlord and Tenant and settlement of rents in Chota Nagpur. Whereas it is expedient to amend and consolidate certain enactments relating to the law of landlord and tenant and the settlement of rents in Chota Nagpur. And whereas the sanction of the Governor-General has been obtained under section 5 of the Indian Councils Act, 1892 (55 and 56 Vict., c. 14) to the passing of this Act; It is hereby enacted as follows: -- 1. Legislative Papers.-- For Statement of Objects and Reasons, see Calcutta Gazette, 1908, Pt. IV, p. 99; for Report of the Select Committee, see *ibid*, 1908, Pt. IV, Extra-ordinary, p. 31; for proceedings in Council, see *ibid*, 1908, Pt. IVA, pp. 207 and 252.

CHAPTER 1

Preliminary

1. Short Title And Extent :-

(1) This Act may be called the Chota Nagpur Tenancy Act 1908.

1[(2) It extends to the 2[North Chotanagpur, the South Chotanagpur Divisions and Palamau Divisions including the areas or parts of the areas which have been constituted into a municipality or a Notified Area Committee under the Bihar and Orissa Municipal Act, 1922 (Bihar and Orissa Act 7 of 1922) or which are within a cantonment.]

1. Substituted by Act 45 of 1982.

2. Substituted by Act 2 of 1996

2. Repeal :-

(1) The Acts and notification specified in Schedule A are hereby repealed in the Chota Nagpur Division 1[**].

2[(2) The Acts specified in Schedule B are hereby repealed in the 3(district of Dhanbad and Patamda, Ichagarh and Chandil Police stations in the district of Singhbhum.)]

1. Words "except the district of Manbhum" rep. by Act 25 of 1947

2. Substituted by ibid.

3. Substituted by B.A.L.O., 1957 for "district of Manbhum".

3. Definitions :-

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

(i) "agricultural year" means the year prevailing in a local area for agricultural purposes and such year shall be deemed to commence and terminate on such dates, respectively, as the 1[State] Government may by notification]2 direct:

3[Provided that where the State Government is the landlord the year commencing from the first day of April shall be the agricultural year for the purposes of this Act;]

(ii) "bhugut bandha mortgage" means transfer of the interest of tenant in his tenancy;

for the purpose of securing the payment of money 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 tenancy during the period of the mortgage;

(iii) "Board" means the Board of Revenue for 4[Bihar 5[**];

6[(iii-a) "bank means --

- (a) a banking company as defined in the Banking Regulation Act, 1949 (10 of 1949);
- (b) the State Bank of India constituted under the State Bank of India Act, 1955 (23 of 1955);
- (c) a corresponding new bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970);
- (d) a Regional Rural Bank established under the Regional Rural Banks Act, 1976 (21 of 1976);
- (e) The Agricultural Refinance and Development Corporation constituted under the Agricultural Refinance and Development Corporation Act, 1963 (10 of 1963); and
- (f) the Agricultural Finance Corporation Ltd., a Company incorporated under the Companies Act, 1956 (1 of 1956.))]
- (iv) "Certificate Officer" means the Certificate Officer as defined in clause 7[3] of section 8[3] of the 1[Bihar and Orissa Public Demands Recovery Act, 1914 (B. & O. Act 4 of 1914);]
- (v) "civil jail" means the civil jail of the district and includes any place appointed by the 1[State] Government for the confinement of prisoners under this Act;
- (vi) "Commissioner" and "Judicial Commissioner" mean respectively the Commissioner and Judicial Commissioner of Chota Nagpur; and include any other person specially empowered]9 by the 1[State] Government to discharge the functions of the Commissioner or Judicial Commissioner as the case may be in any particular area;
- (vii) "Deputy Collector" includes an Assistant Collector and any Sub-Deputy Collector who is specially empowered by the 1[State] Government to discharge any of the functions of a Deputy Collector under this Act;
- (viii) "Deputy Commissioner" in any provision of this Act includes --
 - (a) any Revenue Officer or Deputy Collector who is specially empowered by the 1[State] Government to discharge any of the functions of a Deputy Commissioner under that provision, and
 - (b) any Deputy Collector to whom the Deputy Commissioner may by general or special order, transfer any of his function under that provision;
- (ix) "enhancement" and "enhanced" do not include an increase of rent in respect of land held by raiyat in excess of the area for which rent has previously been paid by him, or in respect of the conversion of upland, whether within or without his holding into korkar; but include any commutation of rent payable in money into rent payable wholly or partly in kind;

- (x) "estate" means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands prepared and maintained under the law for the time being in force by the Deputy Commissioner; and includes Government khas mahals and revenue-free lands not entered in any register;
- (xi) "forest-produce" includes the following, whether taken from a forest or not, that is to say--
- (a) wood, charcoal, caoutehouc, catechu, wood-oil, resin, natural varnish, bark lac, mahua, flowers and myrobalans,
 - (b) trees and leaves, flowers and fruits and all other parts or produce not hereinbefore mentioned of trees,
 - (c) plant not being trees (including grass creepers, reeds and moss) and all parts or produce of such plants,
 - (d) wild animals and skins, tusks, horns, bones, silk, cocoons honey and wax, and all other parts or produce of animals and
 - (e) peat, surface-oil rock and minerals (including iron-stone coal clay, sand and lime-stone) when taken by any person for his own use,
- (xii) "holding" means a parcel or parcels of land held by a raiyat and forming the subject of separate tenancy;
- (xiii) "korkar" means land, by whatever name locally known such as babhala Khandwat jalsasan or ariat, which has been artificially levelled or embanked primarily for the cultivation of rice, and
- (a) which previously was jungle, waste or uncultivated, or was cultivated upland, or which though previously cultivated, has become unfit for the cultivation of transplanted rice, and
 - (b) which has been prepared for cultivation by a cultivator (other than the-landlord); or by the predecessor-in- interest (other than the landlord); 10[***];
- (xiv) "landlord" means a person immediately under whom a tenant holds, and includes the 11[Government];
- (xv) "movable property" includes standing crops;
- (xvi) "Mundari Khunt-Kattidari tenancy" means the interest of a Mundari Khunt-kattidar;
- (xvii) "pay", "payable" and " payment" when used with reference of rent include "deliver", "deliverable" and "delivery";
- (xviii) "permanent tenure" means a tenure which is heritable and which is not held for a limited time;
- (xix) "praedial conditions" means conditions or services appurtenant to the occupation of lands other than the rent, and include rakumats payable by the tenants to landlords and every mahtut mangan, and in madad, and every other similar demand,

howsoever, denominated, and whether regularly recurrent or intermittent;

(xx) "prescribed" means prescribed by the 10[State] Government by rule made under this Act;

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

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

(xxiii) "rent" means whatever is lawfully payable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant, and includes all dues (other than personalservices) which are recoverable under any enactment for the time being in force as if they were rent;

(xxiv) "resumable tenure" means a tenure which is held subject to the condition that it shall lapse to the estate of the grantor and be resumable by him or his successor in title --

(a) on failure of male heirs of the body of the original grantee in the male line, or

(b) on the happening of any definite contingency other than that referred to in sub-clause (a) of this clause;

(xxv) "Revenue-Officer" in any provision of this Act, means any officer whom the 1[State] Government may appoint to discharge any of the functions of revenue officer under that provision;

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

(xxvii) "tenure" means the interests of a tenure-holder and includes an under tenure but does not include a Mundari Khunt-kattidari tenancy;

(xxviii) "village" means --

(a) in any local area in which a survey has been made and record-of-rights prepared under any enactment for the time being in force the area included within the same exterior boundary in the village map finally adopted in making such survey and record as subsequently modified by the decision (if any) of a Court of competent jurisdiction, and

(b) where a survey has not been made and a record-of-rights has not been prepared under any such enactment, such area as the Deputy Commissioner may with the sanction of the Commissioner by general or special order, declare to constitute a village:

12[Provided that when an order has been made under section 80 directing that a survey be made, and record-of-rights prepared in

respect of any local area, estate, tenure or part thereof, the
1[State] Government may by notification declare that in such local
area, estate, tenure or part thereof village shall mean the area
which for the purposes of such survey and record of rights may be
adopted by the Revenue-officer subject to the control of the
Commissioner as the unit of survey and record;]

12[(xxix) "village headman" means the headman of a village or of a
group of villages, whether known as manki or pradhan or manjhi or
otherwise or by an equivocal designation, such as thikadar or
ijaradar;]

Explanation --In the definition "village" includes a portion of a
village; and

(xxx) "Permanent Settlement" means the Permanent Settlement of
Bengal, Bihar and Orrisa made in the year 1798.]

1. Substituted by A.L.O. for "Provincial."
2. For notification under cl. (i) of s. 3 sec Calcutta Gazette 1908 Pt.
I. P. 1843. ibid 1909 P.I.
3. Inserted by Act 20 of 1955.
4. Substituted by Act 6 of 1920.
5. Words "Orissa" rep. by A.O.
6. Inserted by act 45 of 1982.
7. Substituted by Act 6 of 1920.
8. Substituted by Act 25 of 1947.
9. For a notification empowering the District Judge of Manbhum-
Singbhum under this clause, see notification no. 1958. J. dated the
6th April 1936, published in the Bihar Gazette, Pt. I. P. 376.
10. Words " with or without the consent of the landlord according
as such consent is required or not by section 64" rep. by Act 25 of
1947.
11. Substituted by A.L.O. for "Crown."
12. Inserted by Act 6 of 1920.

CHAPTER 2

Classes of tenants

4. Classes Of Tenants :-

There shall be, for the purposes of this Act, the following classes of
tenants, namely: --

- (1) tenure-holders, including under-tenure-holders;
- (2) raiyat, namely : --
 - (a) occupancy-raiyats, that is to say, raiyats having a right of
occupancy in the land held by them,

- (b) non-occupancy raiyats, that is to say, raiyats not having such a right of occupancy, and
- (c) raiyats having khunt-katti rights;
- (3) under-raiyats, that is to say, tenants holding, whether immediately or mediately, under raiyats; and
- (4) Mundari Khunt-kattidars.

5. Meaning Of "Tenure-Holder" :-

"Tenure-holder" means primarily a person who has acquired from the proprietor or from another tenure-holder, a right to hold land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it, and includes --

- (a) the successors-in-interest of persons who have acquired such a right, and
- (b) the holders of tenures entered in any register prepared and confirmed under the Chota Nagpur Tenures Act, 1869 (Ben. Act 2 of 1869).

but does not include a Mundari Khunt-Kattidar.

6. Meaning Of "Raiyat" :-

(1) "Raiyat" means primarily a person who has acquired a right to hold land for the purpose of cultivating it by himself, or by members of his family, or by hired servants, or with the aid of partners; and includes the successors-in-interest of persons who have acquired such a right, but does not include a Miindari-Khunt-Kattidar.

Explanation.-- Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation, notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

(2) A person shall not be deemed to be a raiyat unless he holds land either immediately under a proprietor or immediately under a tenure-holder or immediately under a Mundari Khunt-kattidar.

(3) In determining whether a tenant is a tenure holder or a raiyat, the Court shall have regard to --

- (a) local custom, and
- (b) the purpose for which the right of tenancy was originally acquired.

7. Meaning Of "Raiyat Having Khunt-Katti Rights" :-

(1) "Raiyat having khunt-katti rights" means a raiyat in occupation of, or having any subsisting title to land reclaimed from jungle by the original founders of the village or their descendants in the male line, when such raiyat is a member of family which founded the village or a descendant in the male line of any member of such family:

Provided that no raiyat shall be deemed to have khunt-katti rights in any land unless he and all his predecessors-in-title have held such land or obtained a title thereby virtue of inheritance from the original founders of the village.

(2) Nothing in this Act shall prejudicially affect the rights of any person who has lawfully acquired a title to a khunt-kattidari tenancy before the commencement of this Act.

8. Meaning Of "Mundari Khunt-Kattidar" :-

Mundari khunt-kattidar means a Mundari who has acquired a right to hold jungle land for the purpose of bringing suitable portions thereof under cultivation by himself or by male members of his family, and includes --

(a) the heirs male in the male line of any such Mundari when they are in possession of such land or have any subsisting title thereto, and

(b) as regards any portions of such land which have remained continuously in the possession of any such Mundari and his descendants in the male line, such descendants.

CHAPTER 3

Tenure-Holders

9. Tenure-Holder When Not Liable To Enhancement Of Rent :-

No tenures holder who holds his tenure (otherwise than under a terminable lease) at a fixed rent which has not been changed from the time of the Permanent Settlement shall be liable to any enhancement of such rent, anything in the Bengal Decennial Settlement Regulation, 1793 (8 of 1793) section 51, or in any other law, to the contrary notwithstanding.

9A. Enhancement Of Rent Of Tenure-Holder Or Village Headman :-

-

1[(1) Where the rent of a tenure-holder or village headman is liable to enhancement during the continuance of his tenancy, such enhancement shall be made only by an order of the Deputy Commissioner passed upon an application made to him, or by an order of a Revenue-officer passed under Chapter XII or Chapter XV.

(2) An enhancement, progressive or otherwise, may, subject to any valid contract between the parties, be ordered up to the limit of the customary rate payable by persons holding similar tenancies in the vicinity, or where no such customary rate exists up to such limit as is fair and equitable. In determining what is a fair and equitable rent, regard shall be had to the origin and history of the tenancy.

(3) When the rent of a tenure-holder or village headman has been enhanced, it shall not again be enhanced for a period of fifteen years except by an order of a Revenue-officer passed under Chapter XII or Chapter XV.

(4) Nothing in this section shall apply to a temporary tenure-holder, or to a tenure-holder the rent of whose tenure is subject to variation in accordance with principles expressed in the contract whereby the tenure was created.]

1. Inserted by Act 6 of 1920.

10. Certain Bhuinhars Not Liable To Enhancement Of Rent

:-

No bhuinhar whose lands are entered in any register prepared and confirmed under the Chota Nagpur Tenures Act, 1869 (Ben. Act 2 of 1869), shall be liable to any enhancement of the rent of his tenure.

11. Registration Of Certain Transfers Of Tenures :-

(1) When any tenure or portion thereof is transferred by succession, inheritance, sale, gift or exchange, the transferee or his successor in title shall cause the transfer to be registered in the office of the landlord to whom the rent of the tenure or portion is payable.

(2) The landlord shall, in the absence of sufficient reason to the contrary, allow the registration of all such transfers.

(3) Whenever any such transfer is registered in the office of the landlord he shall be entitled to levy a registration fee of the following amount, namely:-

(a) when rent is payable in respect of the tenure or portion- a fee of two per centum on the annual rent thereof: provided that no such fee shall be less than one rupee or more than one hundred rupees, and

(b) when rent is not payable in respect of the tenure or portion- a fee of two rupees.

(4) If an application for the registration of any transfer of a tenure or portion thereof under sub-section (1) is not made within a period of one year from the date of the transfer, and if the registration

fee, authorised by sub-section (3) is not paid or tendered within that period, the transferee or his successor in title shall not be entitled to recover, at any time after the expiry of the said period by suit or other proceeding, any rent which may have become due to him as the owner of such tenure or portion, between the date of the transfer and the date of the application for registration.

(5) Nothing in this section shall --

(i) validate a transfer of any tenure or portion thereof which, by the terms upon which it is held, or by any law or local custom, is not transferable, or

(ii) affect the right of the landlord to resume a resumable tenure.

12. Procedure On Refusal Of Landlord To Allow Registration Of Transfer Of Tenure :-

If any landlord refuses to allow the registration of any such transfer as is mentioned in section 11, the transferee or his successor in title may make application to the Deputy Commissioner; and the Deputy Commissioner shall thereupon after issuing notice to be served on the landlord, make such inquiry as he considers necessary; and, if no sufficient grounds are shown for the refusal, shall pass an order declaring that the transfer shall be deemed to be registered.

13. Division Of Tenure Or Distribution Of Rent :-

1[(1) A division of any tenure or portion thereof or distribution of the rent payable in respect of any tenure or portion thereof shall be binding on the landlord if the transferor sends to the landlord by registered post a notice of such division or distribution containing the prescribed particulars:

Provided that the landlord may, if he objects to the said division or distribution of the rent, make an application to the Deputy Commissioner for fair division or distribution of rent within the prescribed period from the date of the service of notice.

(2) On the receipt of an application under the proviso to sub-section (1), the Deputy Commissioner shall in the prescribed manner serve on the parties including the landlord a notice of the date on which he intends to hear the application and after hearing the parties and holding such inquiry as he thinks proper, the Deputy Commissioner shall divide or distribute the rent of the tenure in such manner as he deems fair and equitable.

(3) The order of the Deputy Commissioner under sub-section (2)

shall take effect from such date as may be specified in the order.]

1. Substituted by Act 25 of 1947.

14. Annulment Of Encumbrances On Resumption Of Resumable Tenure :-

(1) Upon the resumption of a resumable tenure, every lien, subtenancy, easement or other right or interest created, without the consent or permission of the grantor or his successor by the grantee or any of his successors, on the tenure, or in limitation of his own interest therein, shall be deemed to be annulled, except the following, namely: --

(a) any lease of land whereupon a dwelling house, manufactory or other permanent building has been erected or a permanent garden, plantation, tank, canal, 1[bandh, ahar other works of irrigation.] place of worship, or burning or burying ground has been made, or wherein a mine has been sunk under lawful authority;

2[(aa) any right of 3[the Government] in any land within a cantonment];

(b) any right of a raiyat or cultivator in his holding or land, as conferred by this Act or by any local custom or usage;

(c) any right to hold land occupied by a sacred grove;

(d) any Mundari Khunt-Kattidari tenancy;

2[(dd) any bhuinhari tenure, as defined in the Chota Nagpur Tenure Act, 1869 (Ben. Act 2 of 1869);

(e) any right of a 4[village-headman] in his office or land; and

1[(f) any easement of necessity].

(2) Nothing in clause (a) of sub-section (1) shall confer on any grantee of a resumable tenure or any of his successors, any right over minerals which he does not otherwise possess.

1. Inserted by Act 25 of 1947.

2. Inserted by Act 6 of 1920.

3. Substituted by A.L.O. for "Crown".

4. Substituted by Act 6 of 1920.

15. Saving Of Rights Of Landlord :-

The mere registration of a transfer under section 11, or the mere receipt of registration fee thereunder, or the passing of an order by the Deputy Commissioner under section 12, shall not be deemed to imply a consent to, or permission to make, the transfer, within the meaning of section 14; and the landlord shall not be bound by the terms or conditions of any such transfer.

16. Continuance Of Existing Occupancy Rights :-

1[(1)] Every raiyat who immediately before the commencement of this Act, has, by the operation of any enactment, or by local custom or usage or otherwise, a right of occupancy in any land, shall when this Act comes into force, have a right of occupancy in that land, notwithstanding the fact that he may not have cultivated or held the land for a period of twelve years.

1[(2) The exclusion from the operation of this Act by a notification under sub-section (2) of section (1) of any area or part of an area, which is constituted a municipality under the provisions of 2[the Bihar and Orissa Municipal Act, 1922 (B & O Act 7 of 1922)] or which is within cantonment, shall not affect right, obligation or liability previously acquired, incurred or accrued in reference to such area.]

1. Ins. by Act 6 of 1920.

2. Subs. by Act 25 of 1947.

17. Definition Of "Settled Raiyat." :-

(1) Every person who, for a period of twelve years, whether wholly or partly before or after the commencement of this Act, has continuously held as a raiyat land situate in any village, whether under a lease or otherwise, shall be deemed to have become on the expiration of that period a settled raiyat of that village.

(2) A person shall be deemed, for the purposes of this section, to have continuously held land in a village, notwithstanding that the particular land held by him has been different at different times.

(3) A person shall be deemed, for the purposes of this section, to have held as a raiyat any land held as a raiyat by a person whose heir he is.

(4) Land held by two or more co-sharers as a raiyati holding shall be deemed, for the purposes of this section, to have been held as a raiyat by each such co-sharer.

(5) A person shall continue to be a settled raiyat of village as long as he holds any land as a raiyat in that village and for three years thereafter.

(6) If a raiyat recovers possession of land under section 71, or by suit, he shall be deemed to have continued to be a settled raiyat, notwithstanding his having been out of possession for more than

three years.

(7) If, in any suit or proceeding, it is proved or admitted that a person holds any land as a raiyat, it shall, as between him and the landlord under whom he holds the land, be presumed, for the purposes of this section, until the contrary is proved or admitted, that he has twelve years continuously held that land or some part of it as a raiyat.

18. Bhuinhars And Mundari Khunt-Kattidars To Be Settled Raiyats In Certain Cases :-

The following classes of persons shall be deemed to be settled raiyats for purposes of this Act, in regard to the land in their villages which they cultivate as raiyats (other than their own Bhuinhari or Mundari khunt-kattidari land, and other than landlords privileged lands as defined in section 118) and the provisions of sub-sections (3) to (6) of section 17 shall apply to such persons as if they were raiyats, namely: --

- (a) where any land in a village, other than land known as manjhihas or bethkheta, is entered in any register prepared and confirmed under the Chota Nagpur Tenures Act, 1869 (Ben. Act 2 of 1869) -all member of any bhuinhari family who hold, and have for twelve years continuously held, land in such village, and
- (b) where any village contains land not forming part of a Mundari Khunt-Kattidari tenancy and an entry of mundari khunt-kattidari tenancies or of Mundari Khunt- kattidars in such village has been made in any record-of- rights as finally published under this Act or under any law in force before the commencement of this Act-all male members of any Mundari Khunt-Kattidar family who hold, and have for twelve years continuously held land in such village.

19. Settled Raiyats To Have Occupancy Rights :-

Every person who is a settled raiyat of a village within the meaning of section 17 or section 18 shall 1[subject to the provisions of section 43] have a right of occupancy in all land 2[* * *] for the time being held by him as a raiyat in that village.

1. Ins. by Act 6 of 1920.

2 . "(Other than landlords privileged lands as defined in section 118)" rep. by ibid.

20. Effect Of Acquisition Of Occupancy- Right By Landlord :-

1[(1) When the immediate landlord of an occupancy holding is a proprietor or permanent tenure-holder and the entire interests of the landlord and the raiyat in the holding become united in the same person by transfer, succession or otherwise, such person shall hold the land as a proprietor or permanent tenure-holder, as the case may be, and shall not hold it by any subordinate right whatsoever, but nothing in this sub-section shall prejudicially affect the rights of any third person.

(2) If the occupancy right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder; such person shall hold the land as proprietor or permanent tenure-holder, as the case may be, and shall not hold it by any subordinate right whatsoever. Such transferee shall pay to his co-sharers a fair and equitable sum for the use and occupation of the land, and if he sub-lets the land to a third person, such third person shall be deemed to be a tenure-holder or a raiyat, as the case may be, in respect thereof.

Illustration.--A, a co-sharer landlord, purchases the occupancy holding of a raiyat X. A. sub-lets the land to Y who takes it for the purpose of establishing tenants on it: Y becomes a tenure-holder in respect of the land. Or A sub-lets it to Z who takes it for the purpose of cultivating it himself: Z becomes a raiyat in respect of the land.

In determining from time to time what is a fair and equitable sum under this sub-section, regard shall be had to the rent payable by the occupancy- raiyat at the time of the transfer, and to the principles of this Act regulating the enhancement or reduction of the rent of occupancy-raiyats.

(3) A person interested in any estate, tenure, village or land, whether solely or jointly with others, as a temporary tenure-holder, ijaradar, or farmer of rents, or as a mortgagee in possession, shall not during the period of his lease or mortgage acquire by purchase or otherwise a right to hold any land comprised in his lease or mortgage in any other capacity than as such lessee or mortgagee, and every interest acquired by him in such land during the period of his lease or mortgage, and shall upon the termination of such land during the period of his lease or mortgage, shall upon the termination of such lease or mortgage, cease to exist; provided that if he has settled the land with third person as a tenure-holder or a raiyat, not being prohibited from so doing by the terms of his lease or mortgage the rights of such third person shall not be affected by the mere termination of the lease but such third person

shall be deemed to be a tenure holder or raiyat, as the case may be, in respect of the land.

(4) This section does not prohibit and shall be deemed never to have prohibited the acquisition of a right of occupancy in a parcel of land --

(a) by a village headman if by local custom or usage he has a right to acquire a right of occupancy in land of the class to which that parcel belongs, or

(b) by a temporary tenure-holder who, before becoming such, was himself a resident cultivator of the village, in such parcel has been converted by him into korkar or has been acquired by him by succession or inheritance.

Explanation. --A person having a right of occupancy in land does not lose it by subsequently becoming jointly interested in the land as a proprietor or permanent tenure-holder or by subsequently holding the land in ijara or farm or as a temporary tenure-holder or mortgagee.

1. Subs. by ibid.

21. Rights Of Occupancy Raiyat In Respect Of Use Of Land :-

(1) When a raiyat has a right of occupancy in respect of any land, he may use the land --

(a) in any manner which is authorised by local custom or usage, or

(b) irrespective of any local custom or usage in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy.

1[(2) Notwithstanding anything contained in any entries in the record-of-rights or any local custom or usage to the contrary the following shall not be deemed to impair the value of the land materially or to render it unfit for purposes of the tenancy, namely:-

(a) the manufacture of bricks and tiles for the domestic or agricultural purposes of the raiyat and his family;

(b) the excavation of tanks or the digging of wells or the construction of bandhs and altars intended to provide a supply of water for drinking, domestic, agricultural or piscicultural purposes of the raiyat and his family; and

(c) the erection of buildings for the domestic or agricultural purposes or for the purposes of trade or cottage industries of the raiyat and his family.

(3) If an occupancy-raiyat, who pays for his holding rent in any of the ways specified in sub-section (1) of section 61, excavates a tank on such holding for any purpose mentioned in clause (b) of sub-section (2), the landlords share shall be nine-twentieths and the raiyats share shall be eleven-twentieths in the produce of such tank.]

1. Ins. by Act 25 of 1947.

21A. Rights Of Occupancy-Raiyat In Trees :-

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Notwithstanding anything contained in section 24, when a raiyat has a right of occupancy in respect of any land--

(a) if the rent of such land is paid in cash, or if such land is a rent-free holding or a part of such holding, the raiyat may--

(i) plant trees and bamboos on such land and cut, cut down and appropriate the same.

(ii) cut, cut down and appropriate any tree or bamboos standing on such land.

(iii) appropriate the flowers, fruits and other products of any trees or bamboos standing on such land;

(iv) rear lac and cocoons on trees standing on such land and appropriate the same: 1[Provided that if there is any specific entry in the latest record-of-rights regarding any tree or bamboo which was standing on any such land before the date of the final publication of such record-of-rights to the effect that any right in such tree or bamboo belongs to any person, other than the proprietor of the estate comprising such land or the tenure-holder of such land, the right of the raiyat in such tree or bamboo specified in sub-clauses (ii), (iii), and (iv), shall be exercised in accordance with, and subject to any such entry.]

(b) if the rent of such land is paid in any of the ways specified in sub-section (1) of section 61, the landlord and the raiyat shall have equal shares in the timber and the landlords share shall be nine-twentieths and the raiyats share shall be eleven-twentieths in the flowers, fruits and other products of all trees or bamboos growing on such land whether planted before or after the commencement of the Chota Nagpur Tenancy (Amendment) Act, 1947 (Bihar Act 25 of 1947) and the raiyat shall be entitled to plant any tree or bamboo on such land, but neither the raiyat nor the landlord shall, without the consent of the other be entitled to cut down or appropriate any such tree or bamboo:

Provided that if neither the landlord nor the raiyat agrees to the cutting down of the tree or bamboo and either of them considers such cutting necessary, one or the other may apply for permission to the Deputy Commissioner who, after making summary enquiry and hearing the parties, if, any may, subject to such conditions as he thinks fit, either grant the permission or refuse it, and his decision shall be final.]

1. Subs. by Act 11 of 1950.

22. Protection Of Occupancy-Raiyat From Eviction Except On Specified Grounds :-

An occupancy-raiyat shall not be ejected by his landlord from his holding, except in execution of a decree for ejectment passed on the ground --

(a) that he has used the land comprised in his holding in a manner which is not authorised by section 21 1[or 21A], or

(b) that he has broken a condition, consistent with the provisions of this Act, on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

1. Ins. by Act 25 of 1947.

23. Devolution Of Occupancy-Right On Death :-

If a raiyat dies intestate in respect of a right of occupancy, it shall, subject to any local custom to the contrary, descend in the same manner as other immovable property:

Provided that in any case in which, under the law of inheritance to which the raiyat is subject, his other property goes to the¹[Government], his right of occupancy shall be extinguished.

1. Subs. by A.L.O. for "Crown".

23A. Registration Of Certain Transfers Of Occupancy Holdings :-

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1[(1) When an occupancy-holding or any portion thereof is transferred ²[by sale, gift, will or exchange in accordance with the provisions of this Act], the transferee or his successor in title may cause the transfer to be registered in the office of the landlord to whom the rent of the holding or portion thereof as the case may be, is payable.

3[(2) The landlord shall allow the registration of all such transfers, and shall not be entitled, except in the case of a transfer by sale or gift, to levy any registration fee. In the case of a transfer by sale or gift, the landlord shall be entitled to levy a registration fee of the following amount namely: --

(i) when rent is payable in respect of the holding or portion, a fee of two per centum on the annual rent thereof;

Provided that such fee shall not be less than eight annas or more than fifty rupees; and

(ii) when rent is not payable in respect of the holding or portion, a fee of one rupee.]

(3) A registering officer shall not register any instrument purporting or operating to transfer an occupancy holding or portion of an occupancy holding by sale or gift unless there is paid to him in addition to any fees payable under the Act for the time being in force for the registration of documents, a process fee of the prescribed amount and the registration fee payable under sub-section (2), together with the costs necessary for the transmission of the registration fee to the landlord: Provided that a gift to the husband or wife of the donor or a son adopted under the Hindu Law or to a relation by consanguinity within three- degrees of such donor shall not require any registration fee to be paid to the landlord as provided in sub-section (2).]

(4) When the registration of any such instrument is complete, the registering officer shall send to the Deputy Commissioner the registration fee and the costs necessary for the transmission of the same to the landlord and a notice of the transfer and registration in the prescribed form, and the Deputy Commissioner shall cause the fee to be transmitted to and the notice to be served on the landlord named in the notice in the prescribed manner.

4[(5) If any landlord refuses to allow the registration of any such transfer as is mentioned in sub-section (1), the transferee or his successor in title may make an application to the Deputy Commissioner, and the Deputy Commissioner shall thereupon, after causing notice to be served on the landlord, make such inquiry as

he considers necessary, and 5[shall if he is satisfied that the transfer is not contrary to the provision of this Act,] pass an order declaring that the transfer shall be deemed to be registered, and may also pass such order as he thinks fit in respect of the costs of any such inquiry.]

1. Ins. by Act 6 of 1920.

2. Subs. by Act 2, 1938 for -"in any way authorised by law, by succession, inheritance or sale."

3. Subs. by *ibid*.

4. Sub-sec. (3) re-numbered as (5) and (3) & (4) ins. by Act 2 of 1938.

5. Subs. by *ibid* for "if no sufficient grounds are shown for the refusal shall."

24. Obligation Of Occupancy-Raiyat To Pay Rent :-

An occupancy-raiyat shall pay rent for his holding at a fair and equitable rate.

24A. Division Of Holding By Partition And Distribution Of Rent Thereof :-

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1[(1) When an occupancy holding has been the subject of partition by an order of a Court otherwise --

(a) the division of the said holding made in accordance with such partition shall be binding on the landlord;

(b) if notice in writing of the partition and the distribution of the rent has been served on the landlord in the prescribed form and in the prescribed manner, such distribution of the rent shall be binding on the landlord:

Provided that the landlord may, if he objects to such distribution by an order of a Court or otherwise, if the parties to the distribution of the rent of the holding.

(2) When an occupancy holding has been the subject of partition by an order of a Court or otherwise, if the parties to the partition are unable to distribute the rent of the holding by agreement, any of them may apply to the Deputy Commissioner to distribute the rent of the holding.

(3) (a) On receipt of an application under the proviso to clause (b) of sub-section (1) or under sub-section (2) the Deputy Commissioner shall serve on the parties interested, other than the applicant, a notice of the date on which he intends to hear the application.

Explanation --For the purpose of this clause, the landlord shall be deemed to be a party interested in an application under sub-section (2).

(b) After serving the notice required by clause (a) and hearing the parties and holding such enquiry as he thinks fit, the Deputy Commissioner shall distribute the rent of the holding in such manner as he considers fair and equitable and his decision shall be final.

(4) The order of the Deputy Commissioner under sub-section (3) shall take effect on an application under the proviso to clause (b) of sub-section (1) from the date of the partition, and, on an application under sub-section (2) from such date as the Deputy Commissioner may specify in his order.

(5) The Deputy Commissioner shall have power to award costs to any party to any proceeding under this section, and any sum ordered to be paid as costs shall be recoverable from the party by whom it is payable as a public demand payable to the Deputy Commissioner.

(6) The Deputy Commissioner shall pay any sum recovered as costs by him under sub-section (5) to the party to whom such costs are payable.]

1. Ins. by *ibid*.

25. Presumption That Rent Of Occupancy Raiyat Is Fair And Equitable :-

The rent for the time being payable by an occupancy-raiyat shall be presumed to be fair and equitable until the contrary is proved.

26. Confirmation Of Rents Enhanced Prior To Commencement Of This Act :-

When the rent of any occupancy-raiyat whose rent is liable to enhancement has been enhanced before the commencement of this Act, otherwise than under section 24 of the 1[Chota Nagpur Landlord and Tenant Procedure Act, 1879] (Ben. Act 1 of 1879), such enhanced rent shall be deemed to be lawfully payable --

(a) if it has been actually paid continuously for seven years before the commencement of this Act; and

(b) if it is not proved to be unfair and inequitable:

Provided that, where the rent lawfully payable by an occupancy-raiyat for his holding has been made an issue in any suit for arrears of rent, and the Court has arrived at a finding on that issue, the rent to be found shall be deemed to be lawfully payable by the raiyat for the holding

1. Rep. by Chota Nagpur Tenancy Act, 1908 (Act 6, 1908) see s. 2 and Sch. A.

27. Methods In Which Rent Of Occupancy-Raiyat May Be Enhanced :-

(1) From and after the commencement of this Act --

(a) in any area for which record-of- rights has not been prepared and finally published under this Act or under any law in force before the commencement of this Act, or for which an order has not been issued under this Act or under any law in force before the commencement of this Act for the preparation of such a record, the money-rent of an occupancy-raiyat whose rent is liable to enhancement may be enhanced only by order of the Deputy Commissioner passed under section 29, and

(b) in any area for which a record-of-rights has been prepared and finally published as aforesaid; or for which an order has been issued as aforesaid for the preparation of such a record the money-rent of an occupancy-raiyat whose rent is liable to enhancement may be enhanced only,

(i) in cases referred to in section 62, section 94 or section 99, by order of the Deputy Commissioner passed under section 29, and

(ii) in other cases, by order of a Revenue-officer passed under

Chapter XII.

(2) No enhancement of such rent made after the commencement of this Act in any manner other than that referred to in clause (a) or clause (b), as the case may be, whether by private contract or otherwise, shall for any reason be recognised or given effect to in any suit or proceeding in any Court.

28. Contents Of Application To Deputy Commissioner For Enhancement :-

(1) Every application to the Deputy Commissioner for the enhancement of the rent of an occupancy holding shall specify -

(a) such particulars as may be prescribed regarding the area, situation, local names, quality and boundaries of the parcels of land constituting the holding;

(b) the rates of rent (if any) payable by raiyat for the different classes of land constituting the holding and the yearly rent payable for the holding at the date of the application;

(c) the rates (if any) generally prevailing in the village for corresponding classes of land;

(d) the date (as nearly as it can be ascertained) when the rates of rent generally prevailing were last adjusted in the village.

(e) the rates which the applicant desires to claim; and

(f) the grounds on which the applicant considers that he is entitled to the enhancement claimed.

(2) Sections 146 to 149 shall apply to every application made under this section.

29. Procedure On Receipt Of Such Application :-

(1) When any such application has been received the Deputy Commissioner --

(a) shall forthwith give notice of the contents thereof to the raiyat, and

(b) may, if he thinks fit, order a measurement of the land, and

(c) may, upon consideration of all the circumstances set forth in the application, and after hearing any objection advanced by the raiyat, by order, fix such enhanced rent, or otherwise vary the rent for the said land, as to him may seem fair and reasonable:

Provided that no enhancement shall be ordered except on one or more of the following grounds, namely : --

(i) that the rate of rent paid by the raiyat is below the prevailing rate paid by occupancy-raiyat for land of similar quality and with

similar advantage 1[in the same village or in the neighbouring villages and that there is no sufficient reason for his holding at so low a rate;]

(ii) that there has been a rise in the average local prices of staple food-crops during the currency of the present rent;

(iii) that the productive powers of the land held by the raiyat have been increased by an improvment effected during the currency of the present rent, otherwise than by the agency or at the expense of the raiyat:

Provided also that no enhancement shall be ordered which is, under the circumstances of the case, unfair or inequitable:

Provided, further, that all enhancements shall be limited in the prescribed manner (if any).

(2) The rent is fixed or varied under sub-section (1) shall be payable by the said raiyat from the commencement of the agricultural year following the year in which the order is passed, and may be recovered in any suit instituted against him for arrears of rent.

(3) Nothing in this section shall bar the right of a raiyat to claim at any time under section 34 a reduction of the rent previously paid by him.

1. Ins. by Act 6 of 1920.

30. Power To Direct Gradual Enhancement :-

Where the Deputy Commissioner considers that the immediate enforcement of the full enhancement ordered under section 29 is likely to be attended with hardship, he may direct that the enhancement shall be gradual; that is to say, that the rent shall increase yearly by degrees, for any number of years not exceeding five until the limit of the full enhancement has been reached.

31. Application For Increase Of Rent In Respect Of Land Held In Excess Of The Area For Which Rent Was Previously Paid :-

(1) Where land is held by an occupancy-raiyat in excess of the area for which rent has previously been paid by him, no increase shall be made to the rent payable by him except by order of a Revenue-officer passed under Chapter XII or by order of the Deputy Commissioner passed on an application made to him by the landlord.

(2) Every such application shall specify--

- (a) the yearly rent payable by the raiyat at the date of the application;
- (b) the area and description of the land for which the said rent is payable;
- (c) the proceedings (if any) by which the said rent was fixed;
- (d) the general rate prevailing in the village for corresponding classes of lands;
- (e) the date (as nearly as it can be ascertained) when the said general rate was last adjusted in the village;
- (f) the area and description of the land held in excess of the area for which rent has previously been paid, and in respect of which an increase of rent is claimed; or, if the landlord is unable to indicate any particular land as being held in excess, then the area alone;
- (g) the amount of the said increase;
- (h) the manner in which the said increase has been, or should be, assessed; and
- (i) any other prescribed particulars.

(3) If a survey and record-of-rights have been made under this Act, or under any other law in force before the commencement of this Act, in respect of any land referred to in clause (b) or clause (f) of sub-section (2), the "area and description" required by those clauses, respectively, shall be specified by stating the plot number, area and class of each field included in land, as shown by such survey and record.

(4) Sections 146 to 149 shall apply to every application made under this section.

32. Procedure On Receipt Of Such Application :-

(1) When any such application has been received, the Deputy Commissioner--

(a) shall forthwith give notice of the contents thereof to the raiyat; and

(b) shall refer to the entry (if any) relating to the tenancy in the record-of-rights prepared under this Act or any other law for the time being in force; and

(c) may, if he thinks fit, order a measurement of the land held by the raiyat; and

(d) may, upon consideration of all the circumstances set forth in the application and after hearing any objection advanced by the raiyat and making such further inquiry as the Deputy Commissioner may think necessary, order such an increase, whether progressive

or otherwise, as he may consider to be fair and reasonable :

Provided that, if the landlord proves that, at the time when the measurement on which the claim is based was made, there existed in the estate or tenure or part thereof in which the holding is situated a practice of measuring land before settling rents, the Deputy Commissioner may presume that the area of the holding as entered in any lease or counterpart engagement or (where there is an entry of area in a counterfoil receipt corresponding to the entry of the rent-roll) in the rent-roll relating to the holding was so entered after measurement:

Provided also that an increase of rent shall not be ordered where it would contravene any local custom or usage prohibiting an increase of rent in respect of the increase in area of a holding.

(2) When any increase has been so ordered, it shall be payable from the commencement of the agricultural year following that in which the order is passed, and may be recovered from the raiyat in any suit instituted against him for arrears of rent.

33. Savings :-

Nothing in sections 31 and 32 shall prohibit a landlord from realising --

(a) increased rents from a raiyat for separate parcels of land settled with him in any manner authorised by law, or

1[(b) rents assessed under section 67 A on land converted into korkar.]

1. Subs. by Act 2 of 1938.

33A. Reduction Of Rent :-

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1[The Deputy Commissioner may reduce the rent of an occupancy holding on any of the following grounds, namely: --

(a) that the rent of the holding has been enhanced under section 29 on one or both of the grounds specified in clause (i) and clause (ii) of the proviso to sub-section (1) of that section at any time between the first day of January, 1911 and the thirty-first day of December, 1936;

(b) that the rent of the holding was commuted under section 61, at any time between the first day of January, 1911 and the thirty first day of December 1936;

(c) that the soil of a portion or the whole of such holding has, without the fault of the raiyat, become temporarily or permanently deteriorated by a deposit of sand, by submersion under water or by any other specific, cause, sudden or gradual;

(d) that the landlord of such holding has failed to carry out the arrangements in respect of irrigation which he is bound to maintain;

(e) that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent;

(f) that the land held by the raiyat is of less area than the area for which rent has previously been 2[payable by him.]

1. Ins. by ibid.

2. Subs. by Act 25 of 1947.

34. Application To Deputy Commissioner For Reduction Of Rent :-

(1) Any occupancy-raiyat wishing to claim a reduction of the rent previously paid by him may present an application to the Deputy Commissioner to assess the rent on the land in respect of which such reduction is sought, and (if necessary) to measure the land :

1[Provided that no application for a reduction of rent under clause (a) or clause (b) of section 33 A shall be entertained unless it is filed within a period of two years from the date on which section 5 of the Chota Nagpur Tenancy (Amendment) Act, 1938 (Bihar Act 2 of 1938) comes into force.]

(2) Every such application shall specify-

(a) the yearly rent payable by the raiyat at the date of the application;

(b) the area and description of the land for which the said rent is payable;

(c) the proceedings (if any) by which the said rent was fixed;

(d) the general rate prevailing in the village for corresponding classes of lands;

(e) the date (as nearly as it can be ascertained) when the said general rate was last adjusted in the village;

(f) the amount of reduction claimed;

(g) the grounds on which such reduction is claimed; and

(h) any other prescribed particulars.

(3) sections 146 to 149 shall apply to every application made under this section.

1. Ins. by Act 2 of 1938.

35. Procedure On Receipt Of Such Application :-

(1) When any such application has been received, the Deputy Commissioner--

(a) shall forthwith give notice of the contents thereof to the landlord; and

(b) may, if he thinks fit, order a measurement of land; and

(c) may, upon consideration of all the circumstances set forth in the application, and after hearing any objection advanced by landlord by order 1[fix a reduced rent for the holding] as to him may seem fair and reasonable:

1[Provided that -

- (i) if reduction is claimed under clause (a) of section 33 A the entire enhancement shall be cancelled;
- (ii) if a reduction is claimed under clause (b) of section 33A, the reduced rent shall bear to the previous rent the same proportion as the current prices bear to the average prices during the decennial period immediately preceding the time when the rent was commuted;
- (iii) if a reduction is claimed under clause (c) of section 33A, the Deputy Commissioner may order partial or entire remission of the rent and shall fix a period during which the reduced rent shall be paid or during which the entire rent shall be remitted and may at any time, before the expiration of the said period revise his order if he is satisfied that the soil of the holding has become fit for cultivation;
- (iv) if a reduction is claimed under clause (d) of section 33A, the Deputy Commissioner may at any time revise his order fixing a reduced rent if he is satisfied that the landlord has restored the arrangements in respect of irrigation which he is bound to maintain;
- (v) if a reduction is claimed under clause (e) of section 33A, the reduced rent shall bear to the previous rent the same proportion as the current prices bear to the prices prevailing-
 - (1) at the time when the previous rent first became payable, or
 - (2) if the previous rent first became payable before the preparation of a record-of-rights under Chapter XII and the landlord is unable to prove to the satisfaction of the Deputy Commissioner when the previous rent became payable at the time when a record-of-rights was first prepared in respect of the holding.]
- 1[(2) An order of the Deputy Commissioner under sub-section shall take effect from such date as may be specified in the order.]
- (3) Nothing in this section shall bar the right of the landlord to claim at any time an enhancement under section 29 of the rent of such raiyat.
- 1. Subs. by Act 2 of 1938 for "fix such reduced rent, or otherwise vary the rent for the said land."

36. Bar To Further Enhancement Or Reduction Of Rent Where There Is No Record-Of-Rights :-

- (1) When the rent of an occupancy holding in any area referred to in clause (a) of section 27 has been enhanced by order of the Deputy Commissioner passed under section 29, such rent shall not

again be enhanced for a period of fifteen years except --

(a) by order of the Deputy Commissioner, on the ground of landlords improvement; or

(b) by order of a Revenue-Officer, passed under Chapter XII.

(2) When the rent of an occupancy holding in any such area has been reduced by order of the Deputy Commissioner under 1[section 35] such rent shall not again be reduced for a period of fifteen years except --

(a) by order of the Deputy Commissioner on one of the grounds specified in 2[clauses (c), (d) and (f) of section 33A,] or

(b) by order of a Revenue-officer passed under Chapter XII.

1. Subs. by Act 2 of 1938 for section 34, otherwise than on the grounds specified in proviso (iii) to section 35.

2. Subs. by ibid for provisos (i) and (ii) to section 35.

CHAPTER 5

Raiyats having khunt-katti rights

37. Incidents Of Tenancy Of Raiyat Having Khunt-Katti Rights :-

The provisions of the Act relating to occupancy raiyats shall apply also to raiyat having khunt-katti rights:

Provided as follows: --

(a) subject to any written contract at the time of the commencement of his tenancy, the rent payable by a raiyat having khunt-katti rights for land in respect of which he has such rights shall not be enhanced if his tenancy of such land was created more than twenty years before the commencement of this Act: and

(b) when an order is made for the enhancement of the rent payable by a raiyat having khunt-katti rights for any land in respect of which he has such rights, the enhanced rent fixed by such order shall not exceed one half of the rent payable by an occupancy-raiyat for land of a similar description with similar advantage in the same village.

CHAPTER 6

Non-occupancy-raiyats

38. Initial Rent And Lease Of Non-Occupancy-Raiyat :-

Subject to any local custom or usage, a non-occupancy raiyat shall when admitted to the occupation of land, become liable to pay such rent as may be agreed on between himself and his landlord at the

time of his admission, and shall be entitled to a lease only at such rates and on such conditions as may be agreed on.

39. Effect Of Acquisition By Landlord Of The Right Of A Non-Occupancy-Raiyat In His Holding :-

The provisions of section 20 shall apply in the case of the right of a non-occupancy-raiyat in his holding in the same way that they apply to an occupancy-raiyat.

40. Conditions Of Enhancement Of Rent Of Non-Occupancy-Raiyat :-

The rent of a non-occupancy-raiyat shall not be enhanced except by registered agreement or by agreement under section 42.

41. Grounds On Which Non-Occupancy-Raiyat May Be Ejected :-

A non-occupancy-raiyat shall be subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise, namely: --

(a) on the ground that he has failed to pay an arrear of rent ¹[for two agricultural years within ninety days after the commencement of the third agricultural year;

(b) on the ground that he has used the land comprised in his holding in a manner which is not authorised by local custom or usage or which materially impairs the value of the land or renders it unfit for the purposes of the tenancy;

(c) on the ground that he has broken a condition consistent with this Act, on breach of which he is under the terms of a contract between himself and his landlord, liable to be ejected;

(d) where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired;

(e) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 42, or that the term for which he is entitled to hold at such a rent has expired.

1. Ins. by Act 25 of 1947.

42. Conditions Of Ejectment On Ground Of Refusal To Agree To Pay A Fair And Equitable Rent :-

(1) A suit for ejectment on the ground of refusal to agree to pay a

fair and equitable rent shall not be instituted against a non-occupancy raiyat, unless the landlord has tendered to the raiyat an agreement to pay the rent which he demands and the raiyat has within six months before the institution of the suit, refused to execute the agreement.

1[(2) A landlord desiring to tender an agreement to a raiyat under this section shall file it in the office of the Deputy Commissioner for service on the raiyat.]

(3) When an agreement has been filed under 2[* *] sub-section (2), the Deputy Commissioner shall forthwith cause it to be served on the raiyat in the manner prescribed under section 264 for the service of notices.

(4) When an agreement has been served on a raiyat under sub-section (3) 3[* *] the agreement shall, for the purposes of this section, be deemed to have been tendered.

(5) If a raiyat on whom an agreement has been served under sub-section (3)4[* *] executes it, and within one month from the date of receipt files it in the office of the Deputy Commissioner, it shall take effect from the commencement of the agricultural year next following.

(6) When an agreement has been executed and filed by raiyat under sub-section (5) the Deputy Commissioner shall forthwith cause a notice of its being so executed and filed to be served on the landlord.

(7) If the raiyat does not execute the agreement and files it under sub-section (5) he shall be deemed, for the purposes of this section, to have refused to execute it.

(8) If a raiyat refuses to execute an agreement tendered to him under this section and the landlord thereupon institutes a suit to eject him, the Deputy Commissioner shall determine what rent is fair and equitable for the holding.

(9) If the raiyat agrees to pay the rent so determined, he shall be entitled to remain in occupation of his holding at that rent for a term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejectment on the second ground mentioned in clause (e) of section 41, unless he has acquired a right of occupancy.

(10) If the raiyat does not agree to pay the rent so determined the Deputy Commissioner shall pass a decree for ejectment.

(11) In determining what rent is fair and equitable, the Deputy Commissioner shall have regard to the rents generally paid by non-occupancy raiyat for the land of a similar description and with like

advantages in the same village and (if the Deputy Commissioner thinks fit) in adjoining villages.

1. Subs. by *ibid*.

2. Words. "Clause (a) of" repealed by Act 25 of 1947.

3. Words "or when it is proved to the satisfaction of the Deputy Commissioner that an agreement has been sent to a raiyat by registered post, or, if sent to him by any other means referred to in clause (b) of sub-section (2), has duly reached him" rep. by *ibid*.

4. Words "or to whom an agreement has been sent under sub-section (2), clause (b)" rep. by *ibid*.

CHAPTER 7

Lands exempted from chapters iv and vi

43. Bar To Acquisition Of Right Of Occupancy In, And To Application Of Chapter Vi To Landlords, Privileged Lands And Certain Other Lands :-

Notwithstanding anything contained in Chapter IV, a right of occupancy shall not be acquired in, nor shall anything contained in Chapter VI 1[or in sections 64 to 66] apply to-

(a) landlords privileged lands referred to in clause (a) of section 118 when they are held by a tenant on a registered lease for a term²[exceeding one year or on a lease, written or oral, for a period of one year or less]; or

(b) landlords privileged lands referred to in clause (b) of section 118, or

(c) land acquired under the Land Acquisition Act, 1894 (1 of 1894) for³[any Government] or any local authority or Railway company or land belonging to the 4[Government] within a cantonment while such land remains the property of the 4[Government] or of any local authority or Railway Company, or

5[(d) land belonging to the Government or to any local authority or to any Corporation constituted under any law for the time being in force for the promotion of public health or the agricultural, industrial, economic, or general well-being of the people in any area which is used for any public work, such as a road, canal, embankment, dam or reservoir or is required for the repair or maintenance of the same while such land continues to be so used or required.]

1. Ins. by Act 6 of 1920.

2. Subs. by Act 6 of 1920 for "of Years or on a lease year by year".

3. Subs. by A.O. for "the Govt."

4. Subs. by A.L.O. for "Crown".
5. Subs, by Act 18 of 1951.

Chapter : VIIA - Chapter VIIA

CHAPTER 8

Leases and transfers of holdings and tenures

44. Raiyat Entitled To A Lease :-

Every raiyat shall be entitled to receive from his landlord a lease containing the following particulars, namely: --

- (a) the quantity and boundaries of the land comprised in his holding and where fields have been numbered in a Government survey the number of each field;
- (b) the amount of yearly rent payable for such land;
- (c) the instalments in which the rent is to be paid;
- (d) if the rent is payable wholly or partially in kind, the proportion or quantity or produce to be delivered and the time and manner of delivery; and
- (e) any special condition of the lease.

45. Landlord Entitled To Counterpart Engagement :-

Whenever a landlord grants a lease to a tenant or tenders to a tenant a lease such as he is entitled to receive, the landlord shall be entitled to receive from such tenant a counterpart engagement in conformity with the terms of the lease.

46. Restrictions On Transfer Of Their Rights By Raiyats :-

1[(1) No transfer by a raiyat of his right in his holding or any portion thereof--

- (a) by mortgage or lease for any period expressed or implied which exceeds or might in any possible event exceed five years, or
- (b) by sale, gift or any other contract or agreement, shall be valid to any extent:

Provided that a raiyat may enter into a bhugut bundha mortgage of his holding or any portion thereof for any period not exceeding seven years or if the mortgagee be a society registered or deemed to be registered under the Bihar and Orissa Co-operative Societies Act, 1935 (B.& O. Act VI of 1935) for any period not exceeding fifteen years :

Provided further that --

(a) an occupancy-raiyat who is a member of the 2[Scheduled tribes] may transfer with the previous sanction of the Deputy Commissioner his right in his holding or a portion of his holding by sale, exchange, gift or will to 2[another person who is a member of the Scheduled tribes and] who is a resident within the local limits of the area of the police-station within which the holding is situate;

(b) an occupancy-raiyat who is a member of the 3[Scheduled Castes or backward classes] may transfer with the previous sanction of the Deputy Commissioner his right in his holding or a portion of his holding by sale, exchange, gift, will or lease to another person who is a member of the 3[Scheduled Castes or, as the case may be backward classes] and who is a resident within the local limits of the district within which the holding is situate;

4[(c) any occupancy-raiyat may, transfer his right in his holding or any portion thereof to a society or bank registered or deemed to be registered under the Bihar and Orissa Co-operative Societies Act, 1935 (Bihar and Orissa Act VI of 1935) or to the State Bank of India or a bank specified in column 2 of the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) or to a company or a corporation owned by, or in which not less than fifty-one per cent of the share capital is held by the State Government or the Central Government or partly by the State Government, and partly by the Central Government, and which has been set up with a view to provide agricultural credit to cultivators; and

(d) any occupancy-raiyat who is not a member of the Scheduled Tribes, Scheduled Castes or backward classes, may, transfer his right in his holding or any portion thereof by sale, exchange, gift, will, mortgage or otherwise to any other person.]

(2) A transfer by a raiyat of his right in his holding or any portion thereof under sub-section (1) shall be binding on the landlord.

(3) No transfer in contravention of sub-section (1) shall be registered or shall be in any way recognised as valid by any Court, whether in exercise of civil, criminal or revenue jurisdiction.

5[(3A) Notwithstanding anything contained in any other law for the time being in force, the Deputy Commissioner shall be a necessary party in all suits of a civil nature relating to any holding or portion thereof in which one of the parties to the suit is a member of the Scheduled Tribes and the other party is not a member of the Scheduled Tribes.]

(4) At any time within three years after the expiration of the period for which a raiyat has, under clause (a) of sub-section (1)

transferred his right in his holding or any portion thereof, the Deputy Commissioner shall on the application of the raiyat put the raiyat into possession of such holding or portion in the prescribed manner.

5[(4A) (a) The Deputy Commissioner may, of his own motion or on an application filed before him by occupancy-raiyat who is a member of the Scheduled Tribe, for annulling the transfer on the ground that the transfer was made in contravention of clause (a) of the second proviso to sub-section (1), hold an inquiry in the prescribed manner to determine if the transfer has been made in contravention of clause (a) of the second proviso to sub-section (1):

Provided that no such application be entertained by the Deputy Commissioner unless it is filed by the occupancy-tenant within a period of twelve years from the date of transfer of his holding or any portion thereof:

Provided further that before passing any order under clause (b) or clause (c) of this sub-section, the Deputy Commissioner shall give the parties concerned a reasonable opportunity to be heard in the matter.

(b) If after holding the inquiry referred to in clause (a) of this sub-section, the Deputy Commissioner finds that there was no contravention of clause (a) of the second proviso to sub-section (1) in making such transfer, he shall reject the application and may award such costs to the transferee to be paid by the transferor as he may in the circumstances of the case deem fit.

(c) If after holding the inquiry referred to in clause (a) of this sub-section, the Deputy Commissioner finds that such transfer was made in contravention of clause (a) of the second proviso to sub-section (1), he shall annul the transfer and eject the transferee from such holding or portion thereof, as the case may be, and put the transferor in possession thereof:

Provided that if the transferee has constructed any building or structure, such holding or portion thereof, the Deputy Commissioner shall, if the transferor is not willing to pay the value of the same, order the transferee to remove the same within a period of six months from the date of the order, or within such extended time not exceeding two years from the date of the order as the Deputy Commissioner may allow failing which the Deputy Commissioner may get such building or structure removed:

Provided further that where the Deputy Commissioner is satisfied that the transferee has constructed a substantial structure or

building on such holding or portion thereof before the commencement of the Chotanagpur Tenancy (Amendment) Act, 1969 (Presidents Act 4 of 1969) he may, notwithstanding any other provisions of this Act, validate such a transfer made in contravention of clause (a) of the second proviso to sub-section (1), if the transferee either makes available to the transferor an alternative holding or portion of a holding, as the case may be, of the equivalent value, in the vicinity or pays adequate compensation to be determined by the Deputy Commissioner for rehabilitation of the transferor.

Explanation.-- In this section substantial structure or building means the structure or building of the value exceeding five thousand rupees on the date of holding enquiry, but it does not include such structure or building of any value the material of which cannot be removed without incurring substantial depreciation in its value.]

(5) Nothing in this section shall affect the validity of any transfer (not otherwise invalid) of a raiyat's right in his holding or any portion thereof made bonafide before the first day of January 1903 in the Chota Nagpur Division except the district of Manbhum, or before the first day of January, 1909, in the district of Manbhum.

6[(6) In this section 7[and in section 47] --

(a) "Scheduled Castes" means such castes, races or tribes as are specified in Part II of the Schedule to the Constitution (Scheduled Castes) Order, 1950;

(b) "Scheduled Tribes" means such or tribal communities or parts of or groups within such tribes or tribal communities as are specified in Part II of the Schedule to the Constitution (Scheduled Tribes) Order, 1950; and

(c) "backward classes" means such tribes, classes of citizens as may be declared by the State Government, by notification in the Official Gazette, to be socially and educationally backward.]

1. Subs. by Act 25 of 1947.

2. Subs. by Act 20 of 1955 for "an aboriginal" in the first place and in the second for "another aboriginal."

3. Subs. by Act 20 of 1955 for the words "Scheduled Caste", in the first place and for the words "Scheduled caste" where they occur for the second time, the word "scheduled caste, Backward classes" have been substituted.

4. Subs. by Act 11 of 1976.

5. Ins. by Act 11 of 1976.

6. Subs. by Act. 20 of 1956.

7. Ins. by Act 16 of 1964.

47. Restrictions On Sale Of Raiyats Right Under Order Of Court :-

No decree or order shall be passed by any Court for the sale of the right of raiyat in his holding 1[or any portion thereof] nor shall any such right be sold in execution of any decree or order:

Provided as follows: -

(a) any holding 1[or portion of a holding] may be sold, in execution of a decree of a competent Court, to recover an arrear of rent which has accrued in respect of the holding;

(b) any holding 1[or portion of a holding] may be sold, under the procedure provided by 2[the Bihar and Orissa Public Demands Recovery Act, 1914 (B & O Act 4 of 1914) for the recovery of a loan granted 3[****] under the Land Improvement Loans Act, 1883 (19 of 1883), or the Agriculturists Loans Act, 1884 (12 of 1884) or otherwise by the4[State] Government;

5[(bb) any holding or portion of a holding, belonging to any occupancy-raiyat may be sold, under the procedure provided by the Bihar and Orissa Public Demands Recovery Act, 1914 (Bihar and Orissa Act IV of 1914), for the recovery of loan granted by a society or bank registered or deemed to be registered under the Bihar and Orissa Co-operative Societies Act, 1935 (Bihar and Orissa Act VI of 1935), or by the State Bank of India or a bank specified in column 2 of the First Schedule to the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 (5 of 1970) or by a company or a corporation owned by or in which not less than fifty-one percent of the share capital is held by the State Government or the Central Government or partly by the State Government and partly by the Central Government and which has been set up with a view to provide agricultural credit to cultivators so, however, that if such holding or portion thereof belongs to a member of the Scheduled Tribes or Scheduled Castes, it shall not be sold to any person who is not a member of the Scheduled Tribes, or, as the case may be, of the Scheduled Castes.

(c) Nothing in this section shall affect the right to execute a decree for sale of a holding passed, or the terms or conditions of any contract registered before the first day of January, 1903.

6[* * * * *]

Explanation I.- Where a holding is held under joint landlords, and a decree has been passed for the share of the rent due to one or

more, but not all, of them, proviso (a) does not authorise the sale of the holding⁷[or any portion of the holding] in execution of such decree.

Explanation II. --Proviso (c) does not render valid any document which is otherwise illegal or invalid, or authorise a Court to take judicial cognizance of any such document.

1. Ins. by Act 2 of 1938.

2. Subs. by s. 69 and Sch. III, pt. III, of the B. & O. Public Demands Recovery Act 1914 (B. & O. Act 1914) for "the Public Demands Recovery Act, 1895.

3. The Words "for the benefit of the holding" omitted by Act 20 of 1955.

4. Subs. by A.L.O. for "Provincial."

5. Subs. by Act 4 of 1969 and again by Act 11 of 1976.

6. Repealed by Act 2 of 1938

7. Ins. by *ibid*.

48. Restrictions On The Transfer Of Bhuinhari Tenure :-

1[(1) A member of a Bhuinhari family may transfer any Bhuinhari tenure as defined in the Chota Nagpur Tenures Act, 1869 (Ben. Act 2 of 1869) which is held by him or any portion thereof in the same manner and to the same extent as an aboriginal raiyat may transfer his right in his holding under clauses (a) and (b) of sub-section (2) of section 46.

(2) The 2[State] Government may make rules permitting a member of a Bhuinhari family holds any Bhuinhari tenure to transfer such tenure or any portion thereof by sale, gift, exchange or will subject to such restrictions and conditions as may be specified in the said rules.

(3) Save as provided in sub-section (1) or in any rules made under sub-section (2), a transfer of a Bhuinhari tenure or any portion thereof shall not be valid to any extent.

(4) If a member of a Bhuinhari family transfers any Bhuinhari tenure which is held by him or any portion of such tenure in contravention of the provisions of this section or on the expiration of the period for which any such member has transferred his Bhuinhari tenure or any portion thereof in accordance with the provisions of this section or any rules made thereunder the Deputy Commissioner may, of his own motion or on the application of such member, eject, the transferee and place such member in possession of the said Bhuinhari tenure or portion at any time

within twelve years from the date of the transfer or from the expiration of the period of the transfer as the case may be:

3[Provided that a member of the Bhuinhari family may transfer by a simple mortgage his right in his tenancy or any portion thereof with a view to raising loan for agricultural purposes to a society, bank registered or deemed to be registered under the Bihar and Orissa Co-operative Societies Act, 1935 (Bihar and Orissa Act VI of 1935) or to a Company or Corporation owned by or in which not less than fifty-one per cent of the share capital is held by the State Government or Central Government or partly by the State Government and partly by the Central Government and which has been set up with a view to providing agricultural credit to cultivators.]

(5) A member of a Bhuinhari family who holds land in any village in which a Bhinhari tenure as defined in Chota Nagpur Tenures Act, 1869 (Ben. Act. 2 of 1869) is situated, may transfer such land in the same manner and to the same extent as an occupancy-raiyat transfers his right in his holding under sub-section (3) of section 46, and sub-section (4) of this section shall apply to such land in the same way as it applies to a Bhuinhari tenure.

(6) if any member of a Bhuinhari family transfers his Bhinhari tenure or any portion thereof a lease, the lessee shall not acquire right of occupancy therein].

1. Subs. by Act 2 of 1938.
2. Subs. by A.L.O. for "Provincial".
3. Ins. by Act 45 of 1982.

48A. Restrictions On The Sale Of Bhuinhari Tenure :-

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1[(1) No decree or order shall be passed by any Court for the sale of the right of a member of a Bhuinhari family in his Bhuinhari tenure, nor shall any such right be sold in execution of any decree or order.

(2) A decree for arrears of rent due in respect of any Bhuinhari tenure hold by a member of a Bhuinhari family may be executed by the attachment and sale of the produce of the land comprised in the tenure or by sale of other movable property of the judgment-debtor and not otherwise.]

1. Ins. by Act 2 of 1938.

49. Transfer Of Occupancy Holding Or Bhuinhari Tenure For Certain Purposes :-

1[(1) Notwithstanding anything contained in sections 46, 47 and 48 any occupancy raiyat or any member of a Bhuinhari family who is referred to in section 48 may transfer his holding or tenure or any part thereof for the following purposes:--

(a) In any case, the use of the land for any industrial purposes or for any other purposes which the State Government may by ratification declare to be subsidiary thereto or for access to land used or required for any such purpose.

(b) In any case, the use of the land for the purpose of mining or for any other purposes which the State Government may by notification declare to be subsidiary thereto or for access to land used or required for any such purpose.

(2) The transferee in such cases shall not be entitled to use the land so transferred for any other purpose except for which it was transferred."

(3) Every such transfer must be made by registered deed, and before the deed is registered and the land transferred, the written consent of the Deputy Commissioner must be obtained to the terms of the deed and to the transfer.

(4) Before consenting to any such transfer, the Deputy Commissioner shall satisfy himself that 2[adequate compensation is tendered to the landlord he loss (if any) caused to him by the transfer,] and, where only part of a holding or tenure as transferred, may, if he thinks fit, apportion; between the transferee and the original tenant the rent payable for the holding or tenure.

3(5) The State Government may, at any time within a period of twelve years from the date on which written consent is given by the Deputy Commissioner in regard to the transfer of any holding or part thereof belonging to an occupancy-raiyat who is a member of the Scheduled Tribes either on its own motion or on an application made to it in this behalf set aside such written consent and annul the transfer, if after holding an inquiry in the prescribed manner and after giving reasonable opportunity to the parties concerned to be heard it finds that the consent had been obtained in contravention of the provisions of sub-sections (1) and (2) by misrepresentation or fraud, and in case any holding or part thereof has been transferred on the basis of such written consent direct the Deputy Commissioner to take further necessary action under clause (c) of sub-section (4A) of section 46.

1. Subs. by Act 2 of 1996.

2. Subs. by Act 3 of 1929.

3. Ins. by Act 11 of 1976 (Original sub-sec 5 rep. by Act 2 of 1938)

50. Acquisition Of Tenure Or Holding By Landlord For Certain Purposes :-

1[(1) Notwithstanding anything contained in sections 46 and 47, the Deputy Commissioner may :--

(a) on the application of the landlord of a holding and on being satisfied that he is desirous of acquiring the holding or any part thereof for some reasonable and sufficient purpose having relation to the good of the holding or of the tenure or estate in which it is comprised, such as the use of the land for any charitable, religious or educational purpose, or for the purpose of manufacture or irrigation, or as building ground for any such purpose or for access to land used or required for any such purpose, and after such inquiry as the Deputy Commissioner may think necessary, authorise the acquisition thereof by the landlord upon such conditions as the Deputy Commissioner may think fit and require the tenant to sell his interest in the holding or part to the landlord upon such terms as may be approved by the Deputy Commissioner, including compensation to the tenant.

(b) on the application of the landlord of a tenure or holding and on being satisfied that he is desirous of acquiring any land within the said tenure or holding for the purpose of mining or for any other purpose which the 2[State] Government may by notification declare to be subsidiary thereto or for access to land used or required for such purpose, and after such inquiry as the Deputy Commissioner may think necessary, authorise the acquisition by landlord of such land or part thereof upon such conditions as the Deputy Commissioner may think fit, and require all persons holding interests directly or indirectly subordinate to him in the land to sell their interest to the said landlord upon payment to every such holder or such compensation as the Deputy Commissioner may determine.

(2) (a) In determining the compensation to be paid under this section the Deputy Commissioner shall take into consideration the matter specified in clauses first to fifthly of section 23 of the Land Acquisition Act, 1894 (I of 1894) and the damage, if any resulting from diminution of the profits of the land between the time of the publication of the notice under sub-section (3) and the time when the person making the application under clause (a) or clause (b) of sub-section (1) makes tender of compensation under sub-section (5).

(b) The Deputy Commissioner shall not take into consideration any of the matters specified in clause first to sixthly of section 24 of the Land Acquisition Act, 1894 (1 of 1894), nor any outlay or improvements on, or disposal of the land acquired, commenced,

made or effected after the date of the publication of the notice under sub-section (3).

(c) The Deputy Commissioner shall, in addition to the market value of the land ascertained in accordance with the provisions of clause (a) of this sub-section, award to the holder of any interest acquired under this section a sum of 20 per centum on such market value in consideration of the compulsory nature of the acquisition.

(3) The Deputy Commissioner shall, before holding the inquiry mentioned in clause (a) or clause (b) of sub-section (1), give notice in the prescribed manner of the application for acquisition under this section and of his intention to hold such inquiry, to all persons known or believed to be interested in any land proposed to be acquired, and shall receive and decide any objection to the proposed acquisition which may be made by any person :

Provided that if any person, being the owner or lessee of the minerals lying under the land proposed for acquisition or under any part thereof, shall so object to the Deputy Commissioner, such land or part thereof, as the case may be shall not be required under clause (b) of sub-section (1):

Provided also that if the landlord applies for the acquisition of a part of a holding whether such part includes the homestead land of the raiyat or not, the Deputy Commissioner shall, if the raiyat does not wish to retain the remainder of the holding, reject the application or acquisition, unless the landlord is willing to acquire the entire holding.

(4) On the acquisition under this section of a part of any tenure or holding the Deputy Commissioner may order such reduction of rent as may be fair and equitable.

(5) If the landlord making an application under clause (a) or clause (b) of sub-section (1) tenders to any person, whose holding or interest or part thereof is being acquired such sum as the Deputy Commissioner has determined as compensation under sub-section (2) and such person refuses the same the Deputy Commissioner may, on the landlord depositing the said sum with the Deputy Commissioner, give possession of such holding or interest to the landlord in the prescribed manner.

(6) Any person interested who has not accepted the award under this section may, by written application presented to the Deputy Commissioner within six weeks of the date of the award require that the matter be referred to the principal Civil Court of original jurisdiction for determination in accordance with the procedure prescribed in Part II of the Land Acquisition Act, 1894 (I of 1894).

(7) Nothing herein contained shall enable the Deputy Commissioner to authorise the acquisition of any part of holding whereon a temple, mosque or other place of worship, sacred grove, burial or burning ground exists.

1. Subs. by Act 3 of 1929.

2. Subs. by A.L.O. for "Provincial".

51. Tenant Not Liable To Transferee Of Landlords Interest For Rent Paid To Former Landlord, Without Notice Of The Transfer :-

(1) A tenant shall not when his landlords interest is transferred, be liable to the transferee to the tenants, published in the prescribed manner, shall be paid in good faith to the landlord whose interest was so transferred unless the transferee has before payment served notice of the transfer on the tenant.

(2) Where there are more than one tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the tenants published in the prescribed manner shall be a sufficient notice for the purposes of this section.

CHAPTER 9

GENERAL PROVISIONS AS TO RENT

52. Instalments :-

Subject to any registered agreement or local custom or usage to the contrary, a money-rent payable by a tenant shall be payable in four equal instalments falling due on the last day of each quarter of the agricultural year.

53. Methods Of Payment Of Rent :-

1[(1) Payment of rent by a tenant to his landlord in respect of the land held or cultivated by the tenant may be made either --

(a) by tendering the rent at the mal-cutcherry for the receipt of rent or other place where the rent of such land is usually payable, or

(b) by remitting the amount of the rent to the landlord or his agent by postal money-order in the prescribed form 2[either director through the Deputy Commissioner].

3[(2) Where a tenant (hereinafter referred to in this sub-section as the payer) intends to pay his rent or a portion of his rent by postal money-order through the Deputy Commissioner --

(i) the payer shall remit the amount of such rent or portion of rent, as the case may be, to the Deputy Commissioner together with a sum equal to the postal remittance fee to enable the Deputy Commissioner to remit the amount to the person described in the money-order form as the landlord or his agents (hereinafter referred to in this sub-section as the payee");

(ii) the Deputy Commissioner shall on receipt of the money-order enter the prescribed particulars of all such remittances in a register to be maintained by him in the prescribed form and shall cause the money to be remitted to the payee:

(iii) in the event of the payee accepting the money-order the postal acknowledgment shall remain in the Deputy Commissioners office and shall be made over to the payer on an application made by him in this behalf and if no such application is made, preserved for a period of six years; and

(iv) in the event of the payee refusing the money-order, the amount shall remain in deposit with the Deputy Commissioner to the credit of the payee and may, on application be paid to the payee in the prescribed manner, if such application is made within three years from the date of the deposit and if no such application is made by the payee within the said period, the amount may, on application be paid to the payer in the prescribed manner.

(3) Where rent is sent by postal money-order either direct or through the Deputy Commissioner, the postal acknowledgement in the case of acceptance and the money-order coupon in the case of refusal, duly sealed by the post office, shall be admissible in evidence without formal proof and shall be presumed to be a correct record of acceptance or refusal, as the case may be, by the payee unless the contrary is proved.]

1. Re-numbered as sub-sec. (1) thereof by Act 25 of 1947.

2. Ins. by ibid

3. Subs. by ibid.

54. Receipt For Rent And Interest Thereon :-

(1) Every tenant who makes a payment on account of rent or interest due thereon, or both to his landlord shall be entitled to obtain forthwith from the landlord or his agent, free of charge, a signed receipt for the same, in the prescribed form.

(2) The landlord or his agent shall prepare and retain a counterfoil, in the prescribed form of the receipt.

1[(3) (a) If a landlord or his agent, without reasonable cause fails

to grant such a receipt or to prepare and retain a counterfoil, such landlord or his agent, as the case may be shall be punishable with simple imprisonment for a term which may extend to one month or with fine which may extend to one hundred rupees or both in respect of each such failure.

(b) An offence under clause (a) shall be bailable and shall be compoundable with the leave of the Court and the provisions of the Code of Criminal Procedure, 1898 (5 of 1898)², shall apply to the trial of such offence.

(4) If, in any suit or other proceeding under this Act or any other law the Court or Presiding officer (not being the Deputy Commissioner) finds that any landlord or agent has failed-

(a) to deliver to a tenant a receipt in the prescribed form,

(b) to prepare and retain a counterfoil, in the prescribed form, of a receipt delivered to a tenant as aforesaid,

such Court or officer shall inform the Deputy Commissioner³ [who may take cognizance of the offence and may either try the case himself or transfer it for trial to a competent Magistrate subordinate to him.]

4[* * *]

1. Subs. by Act 25 of 1947.

2. Now Cr. P.C. 1973.

3. Ins. by Act 25 of 1947.

4. Rep. by ibid.

55. Deposit Of Rent In The Court Of Deputy Commissioner :-

In any of the following cases, namely,--

(a) when a tenant tenders or remits money on account of rent, and the landlord or his agent refuses to receive it or refuses to grant a receipt for it; or

(b) when a tenant who is bound to pay money on account of rent has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the landlord or his agent will not be willing to receive it and to grant him receipt for it; or

(c) when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money and no person has been empowered to receive the rent on this behalf; or

(d) when the tenant entertains a bonafide doubt as to who is entitled to receive the rent;

the tenant, whether a suit has been instituted against him or not, may deposit, to the credit of the landlord, the amount which he considers to be due from him, in the Court of the Deputy Commissioner having jurisdiction to entertain a suit or application for such rent;

and such deposit shall, as far as the tenant and all persons claiming through or under him are concerned in all respects operate as and have the full effect of, a payment then made by the tenant of the amount deposited to the credit of the landlord.

56. Procedure On Receipt Of Deposit And Payment Of Same

:-

(1) On the written application of the tenant or his agent, and on his making a declaration in the prescribed form, the Deputy Commissioner shall receive such deposit and give a receipt for the sum deposited.

(2) The Deputy Commissioner shall, as soon as possible after the receipt of any money so deposited, issue a notice, in the prescribed form, to the landlord to whose credit it has been deposited.

(3) If any person claiming to be entitled to receive money in deposit appears and applies for payment thereof to him, the Deputy Commissioner may pay the amount to him if he appears to be entitled to the same or may, if the Deputy Commissioner thinks fit, retain the amount pending a decision by a Civil Court declaring what person is so entitled.

(4) Any sum deposited as aforesaid may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor --

(a) at the discretion of the Deputy Commissioner, and after serving notice on the landlord and giving him an opportunity to object, and for reasons to be recorded in writing at any time within a period of three years from the date on which the deposit was made, or

(b) upon the application of the deposit at any time after the expiration of the said period.

57. Limitation Of Suit Or Application For Rent Due Prior To Deposit :-

Whenever any deposit has been received by the Deputy Commissioner, no suit shall be maintained, and no application for a certificate under section 244 shall be entertained, against the person making the deposit, or his representative, on account of any rent which accrued due prior to the date of the deposit unless such

suit be instituted or such application be made within six months from the date of the service of the notice issued under section 56 in respect of such deposit.

58. What To Be Deemed Arrear Of Rent; Interest On Arrears

:-

(1) Any instalment of rent which is not paid before sunset on the day when the same is payable 1[or, where the State Government is the landlord, is not paid at the end of the agricultural year in which it falls due] shall be deemed an arrear of rent, and shall be liable to simple interest not exceeding 2[six and a quarter] per centum per annum:

Provided that, where a tenant pays his rent in full within the year following the agricultural year in which it accrues due, interest shall not exceed 3[three] per centum on the yearly rent, lawfully payable.

(2) Sub-section (1) shall not apply to dues, which are recoverable under the Cess Act, 8 (Ben. Act 9 of 1880) as if they were lent.

1. Ins. by Act 20 of 1955 (w.e.f. 1.3.55).

2. Subs. by Act 25 of 1947.

3. Subs. by Act 2 of 1938.

59. Ejectment Of Tenure-Holder And Cancellation Of Lease For Arrears :-

When an arrear of rent is adjudged to be due from a tenure-holder not having a permanent or transferable interest in the land, the lease of such tenure-holder shall be liable to be cancelled and the tenure-holder shall be liable to ejectment:

Provided that no such cancellation or ejectment shall be made otherwise than in execution of a decree or order under this Act.

60. Arrear Of Rent To Be First Charge On Tenancy :-

The rent of a tenancy shall be a first charge on the tenancy:

Provided that, if tenancy is sold in execution of a decree for arrears of rent, the purchaser shall acquire the tenancy free of all liability for rent for any period prior to the date of the sale and rent due for any such period shall be a first charge on the sale proceeds of the tenancy.

61. Commutation Of Rent Payable In Kind :-

(1) When any tenure-holder or occupancy-raiyat pays for a tenure or holding rent in kind 1[xxx] or at rates varying with the crop, or partly in one of those ways and partly in another, or partly in any of those ways and partly in money, then the rent so payable shall not be altered, whether by private contract or otherwise, except on the application of either the tenant or his landlord to have the rent commuted to a money-rent.

(2) Such application may be made to the Deputy Commissioner or a Revenue-officer.

(3) When any such application is made, the Deputy Commissioner or Revenue-officer may, after such inquiry as he thinks fit to make, determine the sum to be paid as money-rent, and may order that the tenant shall in lieu of paying his rent in kind or otherwise as aforesaid, pay the sum so determined.

(4) In making the determination, the said officer shall have regard to --

(a) the average money-rent payable by tenants for land of a similar description and with similar advantages in the vicinity;

(b) the average net value of the rent actually received by the landlord during the preceding ten years, or during any shorter period for which evidence may be available;

2[Provided that in dealing with applications pending on the date on which the Chota Nagpur Tenancy (Amendment) Act, 1946 (Bihar Act 15 of 1946), comes into or applications which may be made on and from that date and until such period as may be fixed by notification in this behalf by the 3[State Government, the officer shall in making the determination have regard to the average value of the rent actually received by the landlord during the five years before the first day of Asin, 1347 Fasli or for any shorter period before the said date for which evidence may be available;]

(c) the special circumstances (if any)) which gave rise to the assessment of the rent payable by the tenant at the date of the application;

(d) the charges incurred by the landlord in respect of irrigation under the system of rent in kind, and the arrangements made on commutation for continuing those charges; and

(e) improvements effected by the landlord or the tenant in respect of the 4[tenancy]; and shall proceed in the prescribed manner.

(5) The order shall be in writing, and shall state the grounds on which it is made and the time from which it is to take effect.

(6) When any such order is made by the Deputy Commissioner it shall be subject to appeal as provided in Chapter XV.

(7) When any such order is made by a Revenue officer, an appeal shall lie in the proscribed manner and to the prescribed officer.

4[(8) (a) If the landlord has applied under sub-section (1) and the tenure-holder or occupancy-raiyat objects to the commutation of his rent to money-rent, the officer shall examine the grounds for the application and the objections thereto and may accept or refuse the application as he thinks fit:

Provided that, if he refuses the application, he shall record in writing his reasons for the refusal.

(b) If any application of the landlord is accepted under clause (a), or if the landlord has applied under sub-section (1) and the tenure-holder or the occupancy-raiyat agrees to the commutation of his rent to a money-rent or if the tenure-holder or the occupancy-raiyat has applied under sub-section (1) the officer shall grant the application.]

1. Words "or on the estimated value of a portion of the crop" rep. by Act 2 of 1938.

2. Ins. by Act 15 of 1946.

3. Subs. by A.L.O. for "Provincial".

4. Subs. by Act 2 of 1938.

61A. Commutation Of Rents Of Occupancy Holding :-

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1[If the Governor by notification directs that there shall be commutation of the rents of the occupancy holdings or any class of occupancy holding situated in any area the rent of which is paid in kind or in any of the other ways mentioned in sub-section (1) of section 61, the Deputy Commissioner may, on the application of the raiyat or landlord of any such holding or of his own motion determine the sum to be paid as money-rent for such holding and may order that the raiyat shall in lieu of paying his rent in kind or otherwise as aforesaid pay the sum so determined.]

1. Ins. by ibid.

62. Period For Which Commuted Rents Are To Remain Unaltered :-

Where the rent of a tenure or holding has been commuted under section 61 --

(1) it shall not be increased for a period of fifteen years except -

(a) by order of the Deputy Commissioner, on the ground of a landlords improvement, or an alteration in the area of the tenure or holding, or

(b) by order of a Revenue-officer passed under Chapter XII; and

(2) it shall not be reduced for a period of fifteen years except -

(i) by order of the Deputy Commissioner on one of the grounds specified in 1[clauses (c), (d) and (f) or section 33A], or

(ii) by order of a Revenue-officer passed under Chapter XII.

1. Subs. by Act 6 of 1920.

63. Penalty On Landlord For Levying Anything In Excess Of Rent Including Local Cess Or Of Lawful Praedial Conditions

:-

1[2[(1) (a) If a landlord or his agent levies, except under any special enactment for the time being in force from a tenant of such landlord, any sum of money or anything in excess of the rent lawfully payable by such tenant for his tenancy and the interest payable on an arrear of such rent, or enforces compliances by any tenant with any praedial condition to which he is not lawfully entitled such landlord or agent, as the case may be, shall be punishable with simple imprisonment for a term, which may extend to six months or with fine which may extend to five hundred rupees, or with both.]

3[(b) An offence under clause (a) shall be cognizable bailable and shall be compoundable with the leave of the Court and the provisions of the Code of Criminal Procedure, 1898 (5 of 1898)4 shall apply to the trial of such offence.]

(2) Any levy of local cess from a tenant (not being a tenant holding on a permanent mukarrari lease from a proprietor or permanent tenure-holder in permanently-settled area) --

(a) in excess of the net amount prescribed by clause (2) of section 41 of the Cess Act 1880 (Ben. Act 9 of 1880), or

(b) on any scale in excess of that prescribed by clause (3) of that Section.

shall be deemed to be a levy of money in excess of the rent lawfully payable within the meaning 2[of clause (a) of sub-section (1)].

and all stipulations and reservations for payment of any such excess contained in any contract made between a landlord and a tenant on or after the 13th day of October 1880, shall be void, unless such contract-

(i) was made between a temporary tenure-holder and his landlord before the first day of April, 1920, or

(ii) relates to a tenancy situate in pargana Dhalbhum, the Estate of Porahat or the Kolhan Government Estate, in the district of Singhbhum, and was made prior to the first day of October, 1883 the first day of April, 1896 and the First day of September 1927, respectively.

(3) If in any suit application or proceeding under this Act or any other law the Court or presiding officer (not being the Deputy Commissioner) has grounds for believing that 2[any landlord or his agent is guilty of an offence under clause (a) of sub-section (1) such Court or officer shall inform the Deputy Commissioner 5[who may take cognizance of the offence and may either try the case himself or transfer it for trial to a competent Magistrate subordinate to him].

(4) 6[* * * *]

(5) 6[* * * *]

1. Subs. by Act 6 of 1920.
2. Subs. by Act 2 of 1938.
3. Subs. by Act 25 of 1947.
4. Now Cr. P.C., 1973.
5. Ins. by Act 25 of 1947.
6. Rep. by ibid.

	Chapter : IXA - Settlement of waste lands	
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63A. :-

- Settlement of waste lands to be made by patta

1[Settlement of waste lands belonging to the State Government shall be made by a patta or amalnama in the prescribed form. The patta or amalnama shall be prepared in duplicate, of which one copy shall be given to the raiyat concerned and one copy shall be sent to the Deputy Commissioner of the district.

1. Ins. by Act 20 of 1955.

63B. Settlement Liable To Be Set Aside :-

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In the event of any land settled as aforesaid not being brought under cultivation within a period of five years from the date of the settlement or the land being alienated in contravention of the provisions contained in section 46, it shall be open to the Deputy Commissioner of the district to set aside the settlement and to make resettlement of such land in accordance with provision of section 63A.]

CHAPTER 10

Miscellaneous provisions as to landlord and tenant

64. Conversion Of Land Into Korkar With Deputy Commissioners Permission :-

1[(1) Notwithstanding anything contained in any record-of-rights or any custom or usage to the contrary, every cultivator or landless labourers resident of village or a contiguous village shall have the

right to convert land in that village into korkar with the permission of the Deputy Commissioner previously obtained:

Provided that no permission of the Deputy Commissioner shall be required under sub-section (1) to the conversion of land into korkar by a cultivator where he was entitled on the date of the commencement of the Chota Nagpur Tenancy (Amendment) Act, 1947 (Bihar Act 25 of 1947), by virtue of any entry in the record-of-rights or any local custom or usage to convert such land into korkar without the consent of the landlord.

(2) On receipt of an application for permission to convert land into korkar, the Deputy Commissioner shall in the prescribed manner serve on the landlord a notice of the date on which he intends to hear the application and after hearing the parties and holding such enquiry as he thinks proper the Deputy Commissioner shall either grant or refuse the permission and his decision shall be final:

Provided that the Deputy Commissioner shall dispose of an application made under this section within a period of three months from the date of receipt thereof by him.]

1. Subs. by Act 25 of 1947.

65. Power To Eject Cultivator Or Leave Him In Possession :-

Rep. by the Chota Nagpur Tenancy Act, 1947 (Bihar Act 25 of 1947); section 21.

66. Prohibition Against Conversion Of Certain Land Into Korkan :-

Nothing in section 64 shall authorise any cultivator to convert into korkar any orchard or cultivated or homestead land in the direct possession of any other person.

67. Right Of Occupancy In Korkar :-

Every raiyat who cultivates or holds land which he or any member of his family has converted into korkar shall have a right of occupancy in such land, notwithstanding that he has not cultivated or held the land for a period of twelve years.

67A. Assessment Of Rent On Land Converted Into Korkar :-

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1[(1) (a) Where a raiyat converts land into korkar in accordance with the provision of section 64, no rent shall be payable for such land until after the expiration of a

period of four years from the end of the agricultural year in which the first crop is harvested.

(b) After the expiry of the period specified in clause (a), the landlord may assess rent on the land at a rate not exceeding the rate prevailing in the village for third class rice land, or if according to the custom of the village only one half of the said rate is payable for korkar, at a rate not exceeding one-half of the said rate.

(2) when a landlord assesses rent under sub-section (1), he shall send to the Deputy Commissioner a notice in duplicate in the prescribed form and containing the prescribed particulars.

(3) No rent shall be recoverable by a landlord in respect of land converted by a raiyat into korkar unless the provisions of sub-section (2) have been complied with.

(4) On receipt of the notice referred to in sub-section (2), the Deputy Commissioner shall give notice of the contents thereof to the raiyat and may of his own motion or on the application of the raiyat and after making such enquiry as he considers necessary, by an order, settle rent for the said land at a rate not exceeding the rate prevailing in the village for third class rice land or if, according to the custom of the village only one-half of the said rate is payable for korkar, at a rate not exceeding one-half of the said rate.]

2[(5) Nothing in this section shall prevent the person who has converted land into korkar under the provisions of section 64 from filing an application before the Deputy Commissioner and getting the rent assessed in event of the landlord failing to take steps for assessment of the rent.]

1. Ins. by Act 2 of 1938.

2. Ins. by Act.25 of 1947.

68. Tenant Not To Be Ejected Of Except In Execution Of Decree Or Order :-

No tenant shall be ejected from tenancy or any portion thereof except in execution of decree or in execution of an order of the Deputy Commissioner passed under this Act.

1[Explanation. --The word decree in this section shall include a decree passed by the Civil Court.] -

1. Ins. by Act.25 of 1947.

69. Relief Against Forfeitures :-

(1) Every decree for the ejectment of an occupancy-raiyat or a non-occupancy-raiyat on the ground --

(a) that he has used the land comprised in his holding in a manner which is not authorised by local custom or usage or which materially impairs the value of the land or renders it unfit for the purposes of the tenancy; or

(b) that he has broken a condition consistent with this Act, on breach of which he is, under the terms of the contract between himself and his landlord, liable to ejectment, shall declare the amount of compensation which would reasonably be payable to the plaintiff for the misuse or breach and whether, in the opinion of the Court, the misuse or breach is capable of remedy; and shall fix a period during which it shall be open to the defendant to pay that

amount to the plaintiff and where the misuse or breach is declared to be capable of the remedy, to remedy the same.

(2) The Court may from time to time, for special reasons, extend period fixed by it under sub-section (1).

(3) If the defendant within the period or extended period (as the case may be) fixed by the Court under this section pay the compensation mentioned in the decree, and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court the decree shall not be executed.

70. Decree Or Order For Ejectment When To Take Effect :-

A decree or order for ejectment passed under this Act shall take effect from the end of the agricultural year in which it is passed, or to such earlier date (if any) as the Court may direct.

71. Power To Replace In Possession Tenant Unlawfully Ejected :-

If any tenant is ejected from his tenancy or any portion thereof in contravention of section 68 he may, within a period of one year (or, if he is an occupancy-raiyat three years) from the date of such ejectment, present to the Deputy Commissioner an application praying to be replaced in possession of such tenancy or portion; and the Deputy Commissioner may, if he thinks fit, after making a summary inquiry, replace him in possession in the prescribed manner.

71A. Power To Restore Possession To Member Of The Scheduled Tribes Over Land Unlawfully Transferred :-

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1[If at any time it comes to the notice of the Deputy Commissioner that transfer of land belonging to a raiyat 2[or a Mundari Khunt Kattidar or a Bhuinhar] who is a member of the Scheduled Tribes has taken place in contravention of section 46 2[or section 48 or Section 240] or any other provision of this Act or by any fraudulent method 3[including decree obtained in suit by fraud and collusion] he may, after giving reasonable opportunity to the transferee who is proposed to be evicted, to show cause and after making necessary enquiry in the matter, evict the transferee from such land without payment of compensation and restore it to the transferor or his heir, or in case the transferor or his heir is not available or is not willing to agree to such restoration, re-settle it with another raiyat belonging to the Scheduled Tribes according to the village custom for the disposal of an abandoned holding:

Provided that if the transferee has, within 30 years from the date of transfer, constructed any building or structure on such holding or portion thereof, the Deputy Commissioner, shall, if the transferor is not willing to pay the value of the same, order the transferee to remove the same within a period of six months from the

date of the order, or within such extended time not exceeding two years from the date of the order as the Deputy Commissioner may allow, failing which the Deputy Commissioner may get such building or structure removed:

Provided further that where the Deputy Commissioner is satisfied that the transferee has constructed a substantial structure or building on such holding or portion thereof before coming into force of the Bihar Scheduled Areas Regulation, 1969, he may notwithstanding any other provisions of the Act, validate such a transfer where the transferee either makes available to the transferor an alternative holding or portion thereof, as the case may be, of the equivalent value in the vicinity or pays adequate compensation to be determined by the Deputy Commissioner for rehabilitation of the transferor:

Provided also that if after an enquiry the Deputy Commissioner is satisfied that the transferee has acquired a title by adverse possession and that the transferred land should be restored or re-settled, he shall require the transferor or his heir or another raiyat, as the case may be, to deposit with the Deputy Commissioner such sum of the money as may be determined by the Deputy Commissioner having regard to the amount for which the land was transferred or the market value of the land, as the case may be, and the amount of any compensation for improvements effected to the land which the Deputy Commissioner may deem fair and equitable.

4[Explanation.--In this section substantial structure or building means structure or building the value of which on the day of initiation of enquiry, was determined by the Deputy Commissioner to exceed Rs. 10,000/- but does not include structure or building of any value, the material of which can be removed without substantially impairing the value of.

1. Ins. by Reg. 1 of 1969.
2. Ins. by Reg. 1 of 1986.
3. Ins. by Reg. 1 of 1972.
4. Ins. by Reg. 1 1974

71B. Penalties :-

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If any land is transferred in contravention of section 46 or any other provision of this Act or by fraudulent method and is held or cultivated by any person with the knowledge of such transfer, he shall be punished with imprisonment of either description for a term which may extend to three years or with fine which may extend to one thousand rupees or with both and, in the case of continuing offence, to a further fine not exceeding fifty rupees for each day during which the offence continues.

72. Surrender Of Land By Raiyat :-

(1) A raiyat not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year surrender his holding 1[with the previous sanction of the Deputy Commissioner in writing]

(2) But notwithstanding the surrender, the raiyat shall be liable to indemnify the landlord against any loss of the rent of the holding for the agricultural year next following the date of the surrender, unless he gives to his landlord, at least four months before he surrenders notice of his intention to surrender.

(3) The raiyat may, if he thinks fit, cause the notice to be served through the Court of the Deputy Commissioner within whose jurisdiction the holding or any portion of it is situate.

(4) When a raiyat has surrendered his holding the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.

(5) Nothing in this section shall affect any arrangement by which a raiyat and his landlord may arrange for a surrender of the whole or a part of the holding¹[with the previous sanction of the Deputy Commissioner in writing].

1. Ins by Act 25 of 1947.

73. Abandonment Of Land By Raiyat :-

(1) If a raiyat voluntarily abandons the land held or cultivated by him, without notice to the landlord and ceases either himself or through any other person to cultivate the land and to pay his rent as it falls due, the landlord may, at any time after the expiration of the agricultural year in which the raiyat so abandons and ceases to cultivate enter on the holding and let it to another tenant or take into cultivation himself.

(2) Before a landlord enters this section, he shall send a notice to the Deputy Commissioner in the prescribed manner, stating that he has treated the holding as abandoned and is about to enter on it accordingly; and the Deputy Commissioner shall cause a notice of the fact to be published in the prescribed manner ¹[and if an objection is preferred to him within one month of the date of publication of the notice shall make a summary inquiry and shall decide whether the landlord is entitled under sub-section (1) to enter on the holding. The landlord shall not enter on the holding unless and until such objection has been decided in his favour, or if no objection is preferred, until the expiration of one month from the date of publication of the notice.

(3) When a landlord enters under this section, the raiyat shall be entitled to apply to the Deputy Commissioner for the recovery of possession of the land at any time not later than the expiration of three years in the case of an occupancy-raiyat, or in the case of a non-occupancy-raiyat one year, from the date of the publication of the notice; and thereupon the Deputy Commissioner may, on being satisfied that the raiyat did not voluntarily abandon his holding, restore him to possession in the prescribed manner on such terms (if any) with respect to compensation to person injured and payment of arrears of rent as to the Deputy Commissioner may seem just.

1. Ins. by Act 6 of 1920.

74. Effect Of Lease Purporting To Admit To Occupation After Occupation Has Commenced :-

Where a tenure-holder, village headman or raiyat has been in occupation of a tenure or holding, and a lease is executed with a view to the continuance of such occupation, he shall not be deemed to be admitted to occupation by that lease, notwithstanding that the lease may purport to admit him for occupation.

74A. Determination Of Person To Be Village Headman When Tenancy Is Vacant :-

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1[(1) When a tenancy which in accordance with custom is held by a village headman, has for any reason been vacated, any three or more tenants holding land within the said tenancy or the landlord, may apply to the Deputy Commissioner to determine the person who in accordance with custom should be village headman entitled to hold the tenancy.

(2) Such application may be made notwithstanding that a person is in possession of the land of the tenancy, or part thereof, under the authority or with the consent of the landlord.

(3) On receiving such application the Deputy Commissioner shall, after giving notice in the prescribed manner to the landlord, the person, if any referred to in sub-section (2), the heirs of the last village-headman, the tenants and such other persons, if any, as he considers should be the parties to the proceeding, make such inquiry as appears necessary, and determine the person who in accordance with customs should be village headman entitled to hold the tenancy, and shall place such person in possession of the tenancy, if such person is not already in possession thereof.

(4) In every such inquiry the Deputy Commissioner shall have regard to the entries in a record of rights finally published under this Act or under any law in force before the commencement of this Act, and to the suitability of a person in respect of tribe or caste, membership of the village family, or of the late village headman's family if it be not the village family, residence, character and other matter to be the village headman of the particular village or group of villages comprised in the tenancy.

(5) No suit or application shall be entertained in any Court concerning any matter which is the subject of an application under sub-section (1), or which has been determined under sub-section (3) except a title suit in the Civil Court, instituted within one year from the date of the order passed by the Deputy Commissioner under sub-section (3) to establish the right of the plaintiff to succeed for the tenancy and to recover possession thereof from the person determined by the Deputy Commissioner to be the village headman entitled to hold the tenancy.

(6) No application shall be made under sub-section (1) concerning a matter which is substantially in issue, or has been substantially in issue and has been determined, in a suit instituted under the provisions of sub-section (6) of section 139.]

1. Ins. by Act 6 of 1920.

75. Measurements Of Land :-

(1) Every landlord of an estate, tenure or Mundari Khunt-kattidari tenancy shall have a right to make a general survey or measurement of the lands comprised in such estate, tenure or

tenancy, unless restrained from doing so by express engagement with the occupants of the lands.

(2) If any landlord intending to measure any land which he has right to measure is opposed in making such measurement by the occupant of the land,

or if any tenant having received notice of the intended measurement of land held or cultivated by him, which is liable to such measurement refuses to attend and point out such land, the landlord may present an application to the Deputy Commissioner.

(3) On receipt of such application the Deputy Commissioner shall, after taking such evidence and making such inquiry as he considers necessary pass an order either allowing or disallowing the measurement, and if the case so requires, enjoining or excusing the attendance of any tenant.

(4) If any tenancy, after the issue of an order enjoining his attendance, refuses or neglects to attend, any map or other record of the boundaries and measurements of the land, prepared under the direction of the landlord at the time when the tenant was directed to attend, shall be presumed to be correct until the contrary is shown.

CHAPTER 11

Customs and contract

76. Saving Of Custom :-

Nothing in this Act shall affect any custom, usage or customary right not inconsistent with, or not expressly or by necessary implication modified or abolished by its provisions.

77. Saving As To Service Tenures And Holding :-

Except in so far as the 1[State Government may otherwise directly by notification, nothing in this Act shall affect any incident of a ghatwali or other service tenure or holding.

1. Subs. by A.L.O. for "Provincial"

78. Homesteads :-

When a raiyat holds his homestead otherwise than as part of his holding as a raiyat, the incidents of this tenancy of the homestead shall be regulated by local custom or usage, and subject to local custom or usage, by the provisions of this Act applicable to land

held by a raiyat.

79. Restrictions On Exclusion Of Act By Agreement :-

(1) Nothing in any contract between a landlord and a tenant before or after the commencement of this Act shall-

(a) bar in perpetuity the acquisition of an occupancy-right in land, or

(b) take away an occupancy-right in existence at the date of the contract, or

(c) entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act.

(2) Nothing in any contract made between a landlord and a tenant between the 1st January, 1903, and the commencement of this Act shall prevent a raiyat from acquiring in accordance with this Act, an occupancy right in land, not being landlords privileged lands as defined in section 118.

(3) Nothing in any contract made between a landlord and a tenant after the commencement of this Act shall --

(i) prevent a raiyat from acquiring in accordance with this Act, an occupancy-right in land, or

(ii) take away or limit the right of an occupancy-raiyat to use land as authorised by section 21, or

(iii) take away the right of an occupancy-raiyat to transfer his holding or any portion thereof subject to, and in accordance with, the provisions of this Act, or

(iv) take away the right of an occupancy-raiyat to apply for a reduction of rent under section 34, or

(v) affect the provisions of section 58 relating to interest payable on arrears of rent, or

(vi) take away the right of a tenant or landlord to apply for a commutation of rent under section 61, or

(vii) take away the right of a raiyat to surrender his holding in accordance with section 72:

1[Provided that when a landlord has converted waste land into korkar and subsequently lets the same or a part thereof to a raiyat on registered lease, nothing in this Act shall affect a condition of such lease whereby the raiyat is prevented from acquiring an occupancy-right in the land or part during the period of twenty years from the date on which the landlord commenced to convert the land into korkar, if within the six months next preceding such commencement the landlord intimated to the Deputy Commissioner

in manner prescribed his intention to convert the land into korkar, and satisfied him that it was then waste land.]

1. Ins. by Act 6 of 1920.

79A. Restriction On Payment Of Certain Kinds Of Rent By Agreement :-

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1[(1) Nothing in any contract, express or implied between a landlord and a tenure holder or a raiyat made before or after the commencement of the Chota Nagpur Tenancy (Amendment) Act, 1938 (Bihar Act 2 of 1938), shall entitle the landlord to rent on the estimated value of the whole or a portion of the crop or on the estimated produce of the whole or a portion of the tenure or holding of the tenure-holder or the raiyat according to the system commonly known as danabandi.

(2) Where a tenure-holder or a raiyat was, before the date on which section 21 of the Chota Nagpur Tenancy (Amendment) Act, 1938 (Bihar Act 2 of 1938) came into force, liable to pay for his tenure or holding rent on the estimated value of the whole or a portion of the crop or on the estimated produce of whole or a portion of the tenure or holding, he shall, from and after the said date, be liable to pay to the landlord rent in kind by division of the produce of the tenure or holding.

1. Ins. by Act 2 of 1938.

79B. Restriction On The Share Of The Produce Rent Payable To A Landlord By Agreement :-

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Nothing in any contract, express or implied, between a landlord and a tenure-holder or a raiyat made before or after the date on which section 21 of the Chota Nagpur Tenancy (Amendment) Act, 1938 (Bihar Act 2 of 1938) came into force, shall entitle the landlord to more than nine twentieths of the produce as rent in respect of a tenure or an occupancy holding if rent is payable in kind by division of the produce.]

CHAPTER 12

Record-of-rights and Settlement of Rents

80. Power To Order Survey And Preparation Of Record-Of-Rights :-

(1) The 1[State] Government may make an order directing that a survey be made and a record-of-rights be prepared, by a Revenue-officer, in respect of the lands in any local area, estate, or tenure or part thereof.

(2) A notification in the 2[*] 3[Official Gazette] of an order under sub-section (1) shall be conclusive evidence that the order has been duly made.

(3) The survey shall be made and the record-of-rights shall be prepared in the prescribed manner.

1. Subs. by A.L.O. for "Provincial".

2. Word "Calcutta" rep. by Act, 6 of 1920.

3. Subs. by A.L.O. for "Gazette".

81. Particulars To Be Recorded :-

Where an order is made under section 80, the particulars to be recorded shall be specified in the order, and may include, either without or in addition to other particulars, some or all of the following namely : --

- (a) the name of each tenant or occupant;
- (b) the class to which each tenant belongs, that is to say, whether he is a tenure-holder, Mundari khunt-kattidar, settled raiyat, occupancy-raiyat, non-occupancy-raiyat khunti having khunt-katti rights, or under-raiyat and, if he is a tenure-holder, whether he is a permanent tenure holder or not and whether his rent is liable to enhancement during the continuance of his tenure;
- (c) the situation and quantity and one or more of the boundaries of the land held by each tenant or occupier;
- (d) the name of each tenants landlord;
- (e) the name of each proprietor in the local area or estate;
- (f) the rent payable at the time the record-of-rights is being prepared;
- (g) the mode in which that rent has been fixed-whether by contract, by order of a Court, or otherwise;
- (h) if the rent is a gradually increasing rent, the time at which and the steps by which it increases;
- (j) the rights and obligations of each tenant and landlord in respect of--
 - (i) the use, by tenants, of water for agricultural purposes, whether obtained from a river, jhil, tank or well or any other source of supply, and
 - (ii) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant whether or not such appliances be situated within the boundaries of such land;
- (k) the special condition and incidents (if any) of the tenancy;
- (l) any easement attaching to the land for which the record-of-rights is being prepared;
- (m) if the land is claimed to be held rent-free-whether or not rent is actually paid, and if not paid whether or not the occupant is entitled to hold the land without payment of rent, and, if so entitled under what authority;
- (n) 1[the existence, nature and extent of] the right of any person

whether a landlord or tenant or not, to take forest-produce from jungle-land or waste land, or to graze cattle on any land or to take fish from any water, or of any similar right] in any village in the area to which the record-of-rights applies;

(o) the right of any resident of the village to reclaim jungle-land or waste-land, or to convert land into korkar,

1. Ins. by Act 6 of 1920.

82. Power To Order Survey And Preparation Of Record-Of-Rights As To Water :-

The 1[State] Government may, for the purpose of settling or averting disputes existing or likely to rise between landlords, tenants, proprietors, or persons belonging to any of these classes, regarding the use or passage of water. make an order directing that a survey be made and a record-of-rights be prepared by a Revenue officer, in order to ascertain and record the rights and obligations of each tenant and landlord in any local area, estate or tenure or part thereof, in respect of--

(a) the use by tenants of water for agricultural purposes, whether obtained from a river, jhil, tank or well or any other source of supply; and

(b) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land.

1. Subs. by A.L.O. for "Provincial".

83. Preliminary Publication, Amendment And Final Publication Of Record- Of-Rights :-

(1) When a draft record-of-rights has been prepared under this Chapter, the Revenue officer shall publish the draft in the prescribed manner and for the prescribed period and shall receive and consider any objections which may be made to any entry therein, or to any omission therefrom during the period of publication.

(2) When such objections have been considered and disposed of in the prescribed manner, the Revenue-officer shall finally frame the record and shall cause it to be finally published in the prescribed manner, and the publication shall be conclusive evidence that the record has been duly made under this Chapter.

(3) Separate draft or final records may be published under sub-

section (1) or sub-section (2) for different local areas, estates, tenures or parts thereof.

84. Presumptions As To Final Publication And Correctness Of Record Of Rights :-

(1) In any suit or other proceedings in which a record-of-rights prepared and published under this Chapter or a duly certified copy thereof or extract therefrom is produced, such record-of-rights shall be presumed to have been finally published unless such publication is expressly denied and a certificate, signed by the Revenue-officer, or by the Deputy Commissioner of any district in which its local area, estate or tenure or part thereof to which the record-of-rights relates is wholly or partly situate, stating that the record-of-rights has been finally published, under this Chapter shall be conclusive evidence of such publication.

(2) The 1[State] Government may, by notification, declare with regard to any specified area, that a record-of-rights has been finally published for every village included in that area; and such notification shall be conclusive evidence of such publication.

(3) Every entry in a record-of-rights so published shall be evidence of the matter referred to in such entry and shall be presumed to be correct until it is proved, by evidence, to be incorrect.

1. Subs. by A.L.O. for "Provincial".

85. Settlement Of Fair Rent :-

(1) In every area in respect of which a survey 1[is being or has been made] and a record of-rights 1[is being or has been prepared] under section 80, the Revenue-officer may settle fair rents in respect of any land held by a tenant.

(2) Settlements of rents may be made under sub-section (1) either --

(i) on the application of any landlord or tenant, or

(ii) without such application, if the 2[State] Government so directs.

3[Explanation.--A superior landlord may apply for a settlement of rents, notwithstanding that his estate or tenure or part thereof is held by a temporary lessee or by a tenant who holds on a rent which varies with the rent payable by the raiyats under him.]

(3) Such settlements shall ordinarily be made after the final publication of the record-of-rights, and shall not in any case be made on the application of a landlord or tenant after such final publication, unless such application be made within 4[three]

months from the date of the certificate of such final publication; but may in any case be made before such publication --

(a) with the consent of the parties concerned, or

(b) if the Revenue-officer considers that, that course would, in the circumstance, be advisable.

(4) Whenever a settlement of rents 4[is made under this section] reasonable notice shall first be given to the parties concerned; and an appeal shall lie, in the prescribed manner and to the prescribed officer, from such settlement.

(5) For the purpose of settling rents under this section the Revenue officer shall have regard to such rules as may be made in this behalf under section 264.

1. Subs. by Act 2 of 1938.

2. Subs. by A.L.O. for "Provincial".

3. Ins. by Act 6 of 1920.

4. Subs. by ibid.

86. Decision Of Issues Arising During Course Of Settlement Of Rents :-

Where in any proceeding for the settlement of rents under section 85, any of the following issues arises, namely:-

(a) whether the land is or is not liable to the payment of rent;

(b) whether the land although entered in the record-of-rights as being held-rent-free is liable to the payment of rent;

(c) whether the relation of landlord and tenant exists;

(d) whether the land has been wrongly recorded as part of a particular estate or tenancy or wrongly omitted from the lands of an estate or tenancy;

(e) whether the tenant belongs to a class different from that which he is shown in the record-of-rights as belonging; or

(f) whether the special conditions and incidents of tenancy, or any easement attaching to the land, have not or has not been recorded or have or has been wrongly recorded.

the Revenue-officers shall try and decide such issue and settle the rent under section 85 accordingly.

87. Institution Of Suits Before Revenue-Officer :-

(1) In proceedings under this Chapter a suit may be instituted before a Revenue officer, at any time within three months from the date of the certificate of the final publication of the record-of-rights under sub-section (2) of section 83 for the decision of any dispute

regarding any entry which a Revenue-officer has made in, or any omission which he has made from, the record, 1[except an entry of a fair rent settled under the provisions of section 85 before final publication of the record-of-rights] whether such dispute be --

(a) between landlord and tenant, or

(b) between landlords of the same or of neighbouring estate, or

(c) between tenant and tenant, or

(d) as to whether the relationship of landlord and tenant exists, or

(e) as to whether land held rent-free is properly so held, or

1[(ee) as to any question relating to the title in land or to any interest in land as between the parties to the suit, or]

(f) as to any other matter,

and the Revenue-officer shall hear and decide the dispute:

Provided that the Revenue-officer may, subject to such rules as may be made in this behalf under section 264, transfer any particular case or class of cases to a competent Civil Court for trial:

Provided also that in any suit under this section the Revenue-officer shall not try any issue which has been, or is already, directly and substantially in issue between the same parties or between parties under whom they or any of them claim in proceedings for the settlement of rent under this Chapter, where such issue has been tried and decided, or is already, being tried, by a Revenue-officer under section 86 in proceedings instituted after the final publication of the record-of-rights.

(2) An appeal shall lie, in the prescribed manner and to the prescribed officer from decisions passed under sub-section (1) 1[and a second appeal to the High Court shall lie from any decision on appeal of such officer as if such decision were an appellate-decree passed by the Judicial Commissioner under Chapter XVI.].

1. Ins. by Act 6 of 1920.

87A. Under-Tenant To Be Made Party In Certain Proceedings And Suits :-

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1[When in a proceeding for the settlement of rents under section 85 or in a suit under section 87 the status of a tenant is in issue, the Revenue-officer shall direct that every person holding directly or indirectly under such tenant, whose interest may be affected by the decision of the issue, shall if he is not already a party to the proceeding or the suit, as the case may be, be joined as a party.]

1. Ins. by Act 6 of 1920.

88. Entry In Record-Of-Rights Of Rents Settled And Decisions Made :-

A note of all rents settled under section 85, and of all decisions under sub-section (1) and decisions on appeal under sub-section (2) of section 87 shall be made in the record-of-rights as finally published under section 83 and such note shall be considered as part of the record.

89. Revision By Revenue-Officer :-

(1) Any Revenue-officer specially empowered by the 1[State] Government in this behalf may on application or on his own motion within twelve months from the making of any 2[entry in the draft record-of-rights or of any] order or decision under section 83, section 85 or section 86, revise the same, whether it was made by himself or by any other Revenue-officer, but not so as to affect any order passed under section 87 or any order passed in appeal under section 85, sub-section (4):

Provided that no such order or decision shall be so revised if a suit or a appeal in respect thereof is pending, under section 85, sub-section (4) or section 87 until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

(2) An appeal shall lie, in the prescribed manner and to the prescribed officer, from any order passed under sub-section (1).

1. Subs. by A.L.O. for "Provincial".

2. Ins. by Act 6 of 1920.

90. Correction By Deputy Commissioner Or Revenue-Officer Of Mistake In Record-Of-Rights :-

1[In case of discovery of bonafide or material error in record-of-rights within five years from the date of the certificate of its final publication under sub-section (2) of section 83, the Deputy Commissioner or any Revenue-officer specially empowered by the State Government in this behalf may, on his own motion or on application made to him within the said period, after holding an enquiry in the prescribed manner, by order in writing, direct that such error shall be corrected in the manner specified in the order:

Provided that no such correction shall be made --

(i) until reasonable notice has been given to the parties concerned to appear and be heard in the matter;

(ii) if a suit under section 87, clause (8) of section 111 or 252 or an appeal under clause (10) of section 111 or section 253, affecting such an entry is pending.]

1. Subs. by Act 2 of 1963.

91. Stay Of Certain Proceedings Before Deputy Commissioner Or Civil Court When Order Made For Preparation Of Record-Of-Rights :-

(1) When an order has been made under section 80, or under any law in force before the commencement of this Act, directing the preparation of a record-of-rights, then notwithstanding anything contained in the foregoing sections of this Chapter, no Deputy Commissioner or Civil Court shall, until six months after the final publication of the record-of-right, entertain any suit or application (not being an application under the Code of Criminal Procedure, 1898) (5 of 1898)1-

(a) in which there is in issue, either directly or indirectly the2[existence, non-existence, nature or extent] in the area to which the record-of-rights applies, or any right referred to in clause (n) of section 81, 3[or for the determination, assessment or alteration of the sum payable by any person in respect of such right:] or

(b) for the alteration of the rent or the determination of the status of any tenant in such area:

Provided that, if any person considers himself aggrieved by any act of waste or damage committed by any other person in respect of any waste land or jungle-land during the period within which suits and applications are prohibited by this section, he may apply to the Deputy Commissioner, who may, after such inquiry as he thinks fit, by written order, prohibit the continuance of such waste or damage.

(2) The period during which the institution of a suit or the making of an application has been delayed by sub-section (1) shall be excluded in computing the period of limitation provided for such suit or application.

1. Now Cr. P.C., 1973
2. Subs. by Act 6 of 1920.
3. Ins. by ibid.

92. Bar To Jurisdiction Of Courts In Matters Relating To Record-Of-Rights :-

No suit shall be brought in any Court in respect of any order directing the preparation of a record-of-rights under this Chapter, or in respect of framing, publication, signing or attestation of such a record or of any part of it.

93. Stay Of Certain Proceedings Before Deputy Commissioner Or Civil Court When Record-Of-Rights Finally Published :-

(1) When a record-of-rights in respect of any land has been prepared under this Chapter, and finally published, no application or suit affecting any such land or any tenant thereof shall, within six months from the date of the certificate of final publication of such record-of-rights, be made or instituted before the Deputy Commissioner or in any Civil Court for the decision of any of the following issues, namely: --

- (a) whether the relation of landlord and tenants exists;
- (b) whether the land is part of a particular estate or tenancy;
- (c) whether there is any special condition or incident of the tenancy; or
- (d) whether any easement attached to the land.

(2) If before the final publication of the record-of-rights in such area, a suit involving the decision of any of the issues mentioned in sub-section (1) has been instituted before the Deputy Commissioner or in a Civil Court, the Revenue-officer shall not entertain any suit under section 87 involving the decision of the same issue.

(3) Where the making of an application or the institution of a suit has been delayed by sub-section (1), the period of six months therein mentioned shall be excluded in computing the period of limitation provided for such suit or application.

94. Period For Which Rents Entered In The Record-Of-Rights Are To Remain Unaltered :-

(1) When the rent of an occupancy holding is entered in a record-of-rights which has been prepared and finally published under this Chapter or any law in force before the commencement of the Act 1[or has been reduced under this Chapter], then subject to the provisions of section 2[85], 87, 89 and 90. Such rent shall not, except on the ground of a landlords improvement, be enhanced for a period --

- (a) fifteen years after the final publication of the record-of-rights when such publication was made after the commencement of this Act, or
- (b) seven years after the final publication of the record-of-rights when such publication was made before the commencement of this

Act;

and such rent shall not be reduced within the said period respectively, save on the ground of alteration in the area of the holding or 3[under section 33 A];

and no demand for rent in respect of an occupancy holding in excess of the amount entered in the said record-of-rights, shall be enforceable, save as provided in this Chapter or in section 32 2[or where proceedings by way of appeal or revision were pending on the date of final publication of the record-of-rights, save in accordance with the decision in such proceedings or, in any appeal preferred the reform]:

Provided that in any area in respect of which a record-of-rights has been finally published before the commencement of this Act, a Revenue-officer may on the application of any landlord, made within two years from the commencement of this Act, assess a fair rent on lands which are included in a holding and are assessable with rent but for which no rent has been paid or has been entered as payable in the record-of-rights.

(2) The periods of fifteen years and seven years mentioned in clauses (a) and (b) of sub-section (1) shall be counted from the date of the final publication of the record-of-rights.

1. Ins. by Act 2 of 1938.

2. Ins. by Act 6 of 1920.

3. Subs. by Act 2 of 1938 "on the ground that the soil of the holding has, without the fault of the raiyat, become permanently deteriorated by a deposit of sand, or other specific cause, sudden or gradual."

95. Expenses Of Proceedings Under This Chapter :-

(1) When the preparation of a record-of-rights has been directed or undertaken under this Chapter, the expenses incurred in carrying out the provisions of this Chapter in any local area, estate, tenure or part thereof (including expenses that may be incurred at any time, whether before or after the preparation of the record-of-rights, in the maintenance, repair or restoration of boundary marks and other survey marks erected for the purpose of carrying out the provision of this Chapter), or such part of those expenses as the 1[State] Government may direct, shall be defrayed by the landlords, tenants and occupants of land in the local area, estate, tenure or part, in such proportions and in such instalment (if any), as the 1[State] Government, having

regard to all the circumstances may determine.

(2) The cost of preparing copies of survey maps and extracts from record-of-rights under this Chapter for distribution to landlords, and tenants shall be deemed to be part of the expenses incurred in carrying out the provision of this Chapter.

(3) The estimated amount of the expenses likely to be incurred for the maintenance, repair or restoration of boundary-marks for a period not exceeding fifteen years, or such part of such amount as the 1[State] Government may direct, may be recovered in advance in the same manner as if such expenses had been already incurred.

(4) The portion of the expenses referred to in the foregoing provisions of this section which any person is liable to pay shall be recoverable by the 1[State] Government as if it were an arrear of land-revenue due in respect of the said local area, estate, tenure or part.

Explanation.-The word "tenure" in this section includes all revenue-free and rent-free tenures and holdings within a local area, estate or tenure.

1. Subs. by A.L.O. for "Provincial".

96. Power Of Revenue-Officer To Give Effect To Agreement Or Compromise :-

In framing a record-of-rights, and in deciding disputes under this Chapter the Revenue-officer shall give effect to any lawful agreement or compromise made or entered into by any landlord and his tenant:

Provided as follows: --

(a) the Revenue-officer shall not give effect to any agreement or compromise and terms of which, if they were embodied in a contract could not be enforced under this Act; and

(b) where the terms of any agreement or compromise are such as might unfairly or inequitably affect the right of third parties, the Revenue-officer shall not give effect to such agreement or compromise unless and until he is satisfied by evidence that the statements made by the parties thereto are correct.

97. Date From Which Settled Rent Takes Effect :-

When a rent is settled by a Revenue-officer under this Chapter, it shall take effect from the beginning of the agricultural year next after the date of the decision finally fixing the rent.

98. Revision Of Record-Of-Rights, And New Settlement Of Rents, Under Orders Of State Government :-

(1) The 1[State] Government may at any time either of its own motion or on the application of any landlord or tenant, direct that any record-of-rights which has been Finally published under this Act or under any law in force before the commencement of this Act, or any portion of any such record-of-rights, be revised, in the prescribed manner, but not so as to affect any rent entered therein.

(2) At any time after the expiration of the period of--

(a) fifteen years from the date of the certificate of the final publication of a record-of-rights, when such publication was made after the commencement of this Act, or

(b) seven years from the date of the certificate of the final publication of a record-of-rights, when such publication was made before the commencement of this Act,

and thereafter at intervals of periods of fifteen years, the 1[State] Government may, of its own motion or on the application of any landlord or tenant direct --

(i) that such record-of-rights or any portion thereof be revised in the prescribed manner, and

(ii) that a settlement of rents payable by tenants be made under section 85.

(3) The foregoing sections of this Chapter shall, subject to any rules made in this behalf under section 264, apply to every revision and settlement referred to in sub-section (1) or sub- section (2).

1. Subs. by A.L.O. for "Provincial".

99. Enhancement Of Rent Where Application Under Section 98 Is Rejected :-

If the 1[State] Government rejects any application made by a landlord under section 98, sub-section (2), for a revision of a record-of-rights after the expiration of the period of fifteen years or the period of seven years, as the case may be, referred to in that sub-section, such landlord may apply to the Deputy Commissioner for the enhancement of any rent entered in such record-of-rights as being payable to him.

1. Subs. by A.L.O. for "Provincial".

100. Validation Of Directions Given, Before The Commencement Of This Act For The Record Of Certain Rights :-

Where a direction has been given any order made under section 101 of the Bengal Tenancy Act, 1885 (2 of 1885), before the commencement of this Act, for the record of any rights of the kind mentioned in clause (n) of section 81 of this Act, such direction shall be deemed to be as valid as if the said clause had been enacted before such order was made.

100A. Application Of Certain Provisions To Rights Of Pasturage, To Take Forest Produce, Etc., And To Payment In Respect Thereof :-

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1[2[x x x] The provisions of this Chapter, excluding section 94 and of sections 53 to 58 both inclusive, and section 63, shall, so far as may be, apply to any of the following rights not being rights created by 3[registered contract] namely, right of pasturage, right to take forest-produce, right of fishery, or other similar rights and to the sum, if any, payable by a person in respect thereof, as if such rights, person and sum were respectively land held by a tenant, the tenant thereof and the rent payable in respect thereof, and as if the payee of such sum were the landlord under whom such person holds.

2[****].

1. Subs. by Act ft of 1920.
2. Repealed by ibid.
3. Subs. by Act 5 of 1923.

CHAPTER 13

Praedial conditions, and the commutation and record thereof

101. Prohibition Against New Praedial Conditions :-

From and after the commencement of this Act --

- (a) no tenancy shall be created with any praedial condition attached, other than rent-free tenancies with the sole condition of rendering personal service; and
- (b) no new praedial condition shall be imposed on any tenancy in existence at the time of such commencement.

102. Liability Of Tenant When Original Conditions Of Tenancy Cannot Be Ascertained :-

When the original conditions of a tenancy cannot be ascertained, the tenants shall not be liable to any praedial conditions other than or in excess of those to which, by local custom or usage, he, in common with the general body of the class to which he belongs in the village, tenure or estate in which the lands of the tenancy are situated, is liable:

Provided that, in any case in which praedial conditions have been

complied with by a tenant for a period of five years continuously, any Revenue-officer acting under this Chapter may, when commuting conditions under this Chapter, presume that the same have been complied with in accordance with local custom or usage or in accordance with an express or implied contract made at the commencement of the tenancy.

103. Method Of Calculating Present Value Of Praedial Condition :-

When in any proceeding under this Act, it becomes necessary for a Court to calculate the value of any praedial condition such value shall be taken to be its average value during the ten years immediately prior to the proceedings, or during any shorter period for which evidence may be available.

104. Procedure In Suit For Rent And Value Of Praedial Conditions :-

When, in any suit for the recovery of rent, it is sought to recover the value of the praedial conditions appurtenant to a tenancy, an issue may be framed as to whether the value of the praedial conditions, when added to the rent payable in respect of the tenancy, exceeds a fair rent, and, if it is found that the resulting amount exceeds a fair rent, the Court shall decree the rent and so much (if any) of the value of the praedial conditions as, together with the rent will not exceed the sum which would, having regard to the special circumstances of the case, be a fair rent.

105. Voluntary Commutation Of Praedial Conditions :-

(1) When any land is held subject to any praedial conditions, the tenant or the landlord may apply in writing to a Revenue-officer for commutation of such conditions.

(2) The Revenue-officer shall thereupon cause a notice to be served on the landlord or the tenant, as the case may be, and shall fix a day for considering the application; and on such day, or any day thereafter to which the hearing may be adjourned, shall proceed to inquire into the matter and to determine the amount which, in his judgment, is fairly and equitably payable in commutation of such conditions.

(3) In calculating the said amount, the Revenue-officer shall have regard only to the conditions to which the tenant is liable in

accordance with local custom or usage or with any contract made when the tenancy commenced and to the money value of such conditions at the time of making such calculation and shall follow the procedure provided in section 103 :

Provided that the amount payable in commutation shall be so fixed that the total annual rent of the land, including such amount as aforesaid, shall not exceed the sum which would, having regard to the special circumstances of the case be a fair and reasonable rent if the land were not held subject to any praedial conditions.

106. Power To Order Record Of Praedial Conditions, With Or Without Commutation :-

(1) The 1[State] Government may, in any case in which it is, in its opinion, expedient so to do, make an order directing either --

(a) that a record of all praedial conditions to which the lands within any local area or any estate, tenure or part thereof are subject shall be prepared, and a commutation of such conditions made, by a Revenue-officer; or

(b) that a record as aforesaid be made by a Revenue-officer without commutation of such conditions as aforesaid.

(2) A notification in the 2[**] 3[Official Gazette] of an order under this section shall be conclusive evidence that the order has been duly made.

(3) The record of praedial conditions shall be prepared in the prescribed manner.

1. Subs. by A.L.O. "Provincial."

2. Word "Calcutta" rep. by Act 6 of 1920.

3. Subs. by A.L.O. for "Gazette"

107. Preparation Of Record :-

(1) Whenever an order is made under section 106, the Revenue-officer shall thereupon proceed to prepare a record containing the following particulars, namely: --

(a) the name of each tenant;

(b) the name of his landlord;

(c) the rent payable for the lands held by each tenant at the time the record is being prepared;

(d) the praedial conditions to which all or any of such lands are subject;

(e) the amount which in the judgment of the Revenue-officer, may fairly be deemed payable in commutation of such conditions; and

(f) any other prescribed particulars.

(2) In calculating the amount payable in commutation of such conditions the Revenue-officer shall be guided by the provisions of section 105, sub-section (3).

108. Publication Of Record :-

(1) When the Revenue-officer has prepared a record under section 107, he shall cause a draft of the same to be locally published in the prescribed manner and for the prescribed period, and shall receive and consider any objection which may be made to any entry therein or to any omission therefrom during the period of publication.

(2) When objections have been considered and disposed of in the prescribed manner, the record shall be finally framed and published in the prescribed manner.

(3) Separate drafts or records may be published under sub-section (1) or sub-section (2) for different local areas, estates, tenures or parts thereof.

109. Appeal From Orders Of Revenue-Officers :-

An appeal shall lie, in the prescribed manner and to the prescribed officer, from any order of Revenue-officer under this Chapter.

110. Revision By Commissioner Or Board :-

The Commissioner or the Board may direct the revision of any record prepared under this Chapter, of any portion of such record, at any time within two years from the date of the final publication of the record, but not so as to affect any decision from which an appeal has been preferred under section 109:

Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

111. Procedure Where A Survey And Record-Of-Rights Are Being Made :-

In every local area, estate, tenure or part thereof in which a survey is being made and a record-of-right is being prepared under this Act or under any law in force before the commencement of this Act, and in which a record of praedial conditions is being prepared and a commutation thereof is being made under an order issued under

section 106,

sections 107 to 109 shall not apply, and the following provisions shall have effect, namely : --

(1) The Revenue-officer shall, at the time of attesting the preliminary record ascertain all the praedial conditions to which, by local custom or usage or by contract made when the tenancy commenced each tenant is liable, and the cash values of such condition and shall prepare a statement, in the prescribed form showing the conditions and values so ascertained.

(2) In calculating the cash value of such conditions, the Revenue-officer shall be guided by the provisions of section 105, sub-section (3).

(3) The Revenue-officer shall enter in the Khatiyān of each tenant the cash value of the praedial conditions [if any] to which such tenant is liable as ascertained under clause (1).

(4) If any tenant is liable, by local custom or usage or by contract made when the tenancy commenced, to any praedial conditions other than those to which the general body of tenants are liable or is not liable to all the praedial conditions to which the general body of tenants are liable, the Revenue-officer shall also specify in the Khatiyān the praedial conditions to which such tenant is liable.

(5) The statement prepared under clause (1), and the entries in the Khatiyān shall be published in draft in the same manner and for the same period as the record-of-rights.

(6) Objections as to entries or omissions in the statement or Khatiyān relating praedial conditions may be made under the same condition as objections to entries in or omission from the record-of-rights and shall be disposed of in the same manner as such objections.

(7) After the disposal of objections, the said statement, and the entries in the Khatiyān relating to praedial conditions, shall be finally published at the same time and in the same manner as the record-of-rights.

(8) At any time within three months from the date of the certificate of the final publication of the record-of-rights a suit may be instituted before a Revenue-officer to the decision of any dispute regarding any entry in the record relating to praedial conditions or regarding any omission to enter any such conditions in the record; and the Revenue-officer shall hear and decide the dispute.

(9) In all such suits the Revenue-officer shall, subject to any rules made in this behalf under section 264 adopt the procedure laid down in the Chapter XVI for the trial of suits.

(10) An appeal shall lie, in the prescribed manner and to the prescribed officer, from any decision of a Revenue-officer under clause (8).

112. Note Of Decisions In Record-Of-Rights :-

A note of all decisions under clause (8) and decisions on appeal under clause (10) of section 111 shall be made in the record-of-rights as finally published under section 83, and such note shall be considered as part of the record.

113. Decision Of Questions As To Whether A Payment In Kind Is Praedial Condition Or A Payment Of Rent In Kind :-

Where, in any proceeding under this Chapter or under section 61, a question arises as to whether a payment in kind is a praedial condition or a payment of rent in kind, the Revenue-officer acting under this Chapter or the officer acting under section 61, as the case may be, shall after such inquiry as he may consider necessary, decide whether in fact the payment is a praedial condition or not.

114. Commencement And Effect Of Commutation :-

(1) When the commutation of any praedial conditions is settled under this chapter for any local area or estate, tenure or part thereof, the settlement shall take effect from the beginning of the agricultural year next after the final publication of the record.

(2) The amount determined by a Revenue-officer under this Chapter to be payable by a tenant in commutation of praedial conditions shall be deemed to be part of the rent payable by the tenant and shall be recoverable accordingly.

115. Expenses Of Voluntary Commutation :-

When in any case the proceedings under section 105 have been completed, the Revenue officer shall apportion the total expenses thereof between the landlord and tenant in such proportion as, having regard to all the circumstances, he may deem fit; and the amount so apportioned shall be recoverable as an arrear of land revenue.

116. Expenses Of Record And Compulsory Commutation :-

(1) The expenses incurred by the 1[State] Government in carrying

out in any local area or any estate, tenure or part thereof any order made under section 106, or such part of those expenses as the 1[State Government may direct, shall be defrayed by the landlords and tenants of land in the local area, estate, tenure or part, in such proportions as the 1[State] Government having regard to all the circumstances may determine.

(2) The portion of the aforesaid expenses which any person is liable to pay shall be recoverable by the 1[State] Government as if it were an arrear of land revenue due in respect of the said local area, estate, tenure or part.

Explanation. --The word "tenure" in this section included all revenue free and rent-free tenures and holdings within a local area, estate or tenure.

1. Subs. by A.L.O. for "Provincial".

117. Saving Of Right To Claim Reduction Or Enhancement Of Rent :-

No proceedings under this Chapter shall bar the right of any tenant or landlord to claim a reduction or enhancement of rent under this Act after such proceedings have been completed.

CHAPTER 14

Record of landlord's privileged lands

118. Definition Of "Landlords Privileged Lands" :-

(1) The expression landlords privileged lands, as used in this Chapter, means --

(a) lands which are cultivated by the landlord himself with his own stock or by his own servants, or by hired labour or are held by a tenant on lease for a term 1[exceeding one year, or on a lease written or oral for a period of one year or less], and which are by custom, recognized as privileged land in which occupancy- rights cannot accrue, and

(b) 2[lands which are known as ziral in the Chota Nagpur Division other than the 3[districts of Ranchi and Dhanbad and Patamda, Ichagarh and Chandil police-stations in the district of Singhbhum], lands which are known as man in the 4[district of Dhanbad and Patamda, Ichagarh and Chandil police stations in the district of Singhbhum] and lands which are entered as manjhias or bethkheta in any register prepared and confirmed under the Chota Nagpur Tenures Act, 1869 (Ben. Act 2 of 1869).]

(2) From such date 5[as the 6[State] Government may by

notification direct, no lease 7[for a term which exceeds or might in any possible event exceed one year] shall be considered for the purpose of clause (a) of this section unless it be in writing.

1. Subs. by Act. 6 of 1920.

2. Subs. by Act 25 of 1947.

3. Subs. by the B.A.L.O: 1957 for "districts of Ranchi and Manbhum."

4. Subs. by ibid for "district of manbhum."

5. The 1st April 1909 was the date appointed by notification under this section, for which see Calcutta Gazette of 1909, Pt I. P II. An identical notification was issued for the Manbhum district portions of which are now included in the district of Dhanbad and Singhbhum. See Calcutta Gazette of 1910, Pt. I.p 224.

6. Subs. by A.L.O. for "Provincial".

7. Ins. by Act 6 of 1920.

119. Power To Direct A Survey And Record Of Landlords Privileged Lands :-

The 1[State] Government may, by notification, direct a Revenue-officer to make a survey and record of all lands in any specified local area which are landlords privileged lands within the meaning of clause (a) of section 118.

1. Subs. by A.L.O. for "Provincial".

120. Application Of Certain Sections :-

When a notification has been published under section 119, directing the making of a record, the provisions of sections 83, 84, 87, 88 90, 95 and 96 so far as they may be applicable, shall apply to such record as if it were a record-of-rights referred to in those sections.

121. Power To Record Landlords; Privileged Lands On Application Of Landlord Or Tenant :-

When any land is alleged to be a landlords privileged land within the meaning of clause (a) of section 118, then, on the application of the landlord or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue-officer may ascertain and record whether the land is or is not landlords privileged land within the meaning of the said clause:

Provided that, when a record of such lands has been or is being made by a Revenue-officer under section 119, no application shall

be entertained under this section.

122. Procedure In Inquiries :-

In any inquiry under this Chapter, a Revenue-officer -

(1) shall have regard to any evidence that may be available in respect of the following among other matters namely : --

(a) who originally reclaimed the lands and brought them under cultivation,

(b) whether the lands have at any time been let as landlords privileged lands or as raiyati lands, and

(c) whether the lands have, since their reclamation, been let year by year, or for specific, or for indefinite periods; and

(2) shall proceed in the prescribed manner; and

(3) shall receive in evidence any judgment, decree or order (sic) Civil Court or of the Deputy Commissioner, if the same be relevant, but no such judgment, decree or order shall be conclusive proof that the lands are, or are not landlords privileged lands.

123. Presumption That Lands Are Not Landlords Privileged Lands :-

In any inquiry by a Revenue-officer under this Chapter or by any Court, as to whether lands are or are not landlords privileged lands, the officer or Court shall presume until the contrary is proved, that the lands are not landlords privileged lands.

124. No Land In Certain Villages To Be Recorded As Landlords Privileged Lands :-

Where any land in any village is entered as Manjhihas or bethkheta in any register prepared and confirmed under the Chota Nagpur Tenures Act, 1869 (Ben. Act 2 of 1869), a Revenue-officer acting under this Chapter shall not record any other lands in that village as being landlords privileged lands.

125. Exclusion Of Unrecorded Lands From Category Of Landlords Privileged Lands :-

When a record of landlords privileged lands has been prepared under section 119 for any area, no other lands in that area shall be deemed to be landlords privileged lands.

126. Appeal :-

An appeal shall lie, in the prescribed manner and to the prescribed officer from decisions and orders of a Revenue-officer under this Chapter.

CHAPTER 15

Record-of-rights and obligations of raiyats having khunt-katti rights, village headmen and other classes of tenants

127. Record-Of-Rights And Obligations Of Raiyats Having Khunt-Katti Rights, Village Headmen And Other Classes Of Tenants :-

(1) The 1[State] Government may make an order directing that a record be prepared by a Revenue-officer of the rights and obligations in any specified local area of -

- (a) raiyat having khunt-katti rights;
- (b) 2[village headman], or
- (c) any other class of tenants,

and that a settlement of fair rents to be paid by such persons or any of them be made.

Explanation. --The word rights, as used in this sub-section includes the right of a village-headman to hold his office as well as his right to hold land.

(2) A notification in the 3[**] 4[Official Gazette] of an order this section shall be conclusive evidence that the order has been duly made.

- 1. Subs. by A.L.O. for "Provincial".
- 2. Subs. by Act 6 of 1920.
- 3. Word "Calcutta" rep. by ibid.
- 4. Subs. by A.O. for "Gazette."

128. Application Of Certain Sections :-

(1) When a notification has been published under section 127, directing the preparation of a record, the provisions of section 81, section 83, section 84, sub-sections (1) and (2) and sections 89 to 96, so far as they may be applicable, shall apply as if such records were referred to in those sections.

(2) When any such notification directs that a settlement of fair rents be made, the provisions of section 85, sub-sections (3), (4) and (5), section 86, section 89 and sections 95 to 97, so far as they may be applicable shall apply to such settlement as if it were a settlement referred to in those sections.

129. Notice Of Entries To Interested Persons :-

At the time of the final publication of a record prepared by a Revenue-officer under this Chapter, that officer shall cause a copy of the entries therein to be served in the prescribed manner, on all persons interested in such entries, so far as such persons can be ascertained.

130. Suits To Decide Disputes As Entries In, Or Omission From, Record :-

(1) Where there is a dispute regarding the correctness of any entry made in a record prepared under this Chapter or regarding any incorrect omission therefrom, a suit may be instituted before a Revenue-officer at any time within three months from the date of the certificate of the final publication of the record:

Provided that in any suit under this section, the Revenue officer shall not try any issue which has been, or is already, directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, in proceedings for the settlement of rents, where such issue has been tried and decided, or is already being tried, by a Revenue-officer acting under section 86 in proceedings instituted after the final publication of the record.

(2) In all suits under this section the Revenue-officer shall, subject to any rules made in this behalf under section 264, adopt the procedure laid down in Chapter XVI for the trial of suits before the Deputy Commissioner.

(3) An appeal shall lie, in the prescribed manner and to the prescribed officer, from the decision of the Revenue-officer in such suits.

131. Note Of Final Decisions In Record :-

A note of all decisions under sub-section (1) of section 130 and of all decisions on appeal under sub-section (3) of that section shall be made in the record prepared under section 127, and such note shall be considered as part of the record.

132. Evidential Value Of Entries :-

When a record has been finally published under section 128, or amended under section 131, the entries made therein shall 1[in every suit, application or proceeding to which the landlord or a

tenant or any person claiming to be the landlord or a tenant is a party] be conclusive evidence of the rights and obligations of the tenants to which such entries relate and of all the particulars recorded in such entries.

1. Ins. by Act 6 of 1920.

133. Revenue-Officer To Have Regard To Origin And Nature Of Tenancy And Status Of Tenants :-

In making inquiries under this Chapter into the rights and obligations of tenants the Revenue-officer shall have regard to the origin and nature of each tenancy and the real status of the tenant, notwithstanding that the tenant may have been described in any document as a thikadar or temporary lease holder or in any other similar terms.

134. Exclusion Of Unrecorded Lands From Category Of Khunt-Katti Lands :-

When a record-of-rights and obligations of raiyats having khunt-katti rights has been prepared under this Chapter for any local area, no lands in such area, which are not entered in such record shall be recognised as lands in respect of which khunt-katti rights can be acquired.

CHAPTER 16

Judicial Procedure in Matters Cognizable by the Deputy Commissioner

135. Place For Holding Deputy Commissioners Court :-

The Deputy Commissioner may hold a Court for hearing and determining suits and applications under this Act, in any place within the local limits of his jurisdiction:

Provided that every hearing and decision shall be in open Court, and that the parties to the suit or application, or their agents, shall have had due notice to attend at such place.

136. Office For Instituting Suits And Making Applications :-

Suits and applications before the Deputy Commissioner under this Act shall respectively be instituted and made --

- (a) in the revenue-office of the district; or
- (b) when the cause of action has arisen within the local limits of the jurisdiction of a Deputy Collector who is empowered to receive such suits or application, then in the office of such Deputy Collector; or

(c) in the office of the Revenue-officer having jurisdiction to entertain the same.

137. Withdrawal Of Suits :-

The Deputy Commissioner may withdraw any suit 1[application or proceedings] from any Deputy Collector or Revenue-officer who is exercising powers of the Deputy Commissioner under this Act and may try it himself or transfer it to any Deputy Collector.

1. Ins. by Act 6 of 1920.

138. Jurisdiction Where Land Is Situated In More Than One District Or Subdivision :-

(1) When any suit is instituted or application made in respect of any land comprised in a tenure or holding and such land is situated in more than one districts or subdivisions, the district or subdivision in which the greater part of such land is situated shall be deemed to be the district or subdivision in which the cause of action has arisen:

and, if any question be raised respecting the district or subdivision in which the greater part of the land is situated, the Board or (if the land is situated in one district) the Deputy Commissioner shall decide the question.

(2) Except as provided in sub-section (1), no Deputy Commissioner shall exercise any jurisdiction under this Act in respect of any land situated beyond the local limits of his jurisdiction even if such land forms part of an estate the revenue of which is paid into the treasury of his district.

139. Certain Suits And Applications Cognizable Only By The Deputy Commissioner :-

The following suits and applications shall be cognizable by the Deputy Commissioner, and shall be instituted and tried or heard under the provisions of this Act, and shall not be cognizable in any other Court, except as otherwise provided in this Act, namely: --

(1) all suit for the delivery of leases or counterpart engagements:

1[(2)] (a) all suits and applications for the determination of the rent payable by a tenant for --

(b) all suit and applications not otherwise provided for in this Act for the assessment of rent upon, or for alteration of rent payable by a tenant for--

(c) all suits for arrears of rent on account of --

agricultural land, whether subject to the payment of rent or only to the payment of dues recoverable as if they were rent;

(3) (a) all applications to determine the existence, non-existence, nature or extent of--

(b) all applications for determination of the sum payable by any person in respect of--

(c) all applications for assessment of the sum fairly payable by any person or for alteration of the sum payable by any person, in respect of--

(d) all applications for damages in respect of exceeding, or in respect of interference with the enjoyment of-

(e) all suits for arrears of anything payable in respect of--

2[any of the following rights (not being rights created by a registered contract) namely rights of pasturage,] rights to take forest produce, rights of fishery or other similar rights;

(4) all suits and applications 1[under this Act to eject any tenant of agricultural land or to cancel any lease of agricultural land;

(4A) all suits for ejectment of a trespasser where the plaintiff claims as alternative relief that the defendant be declared liable to pay for the land in his possession a fair rent;

(5) all suits and applications to recover the occupancy or possession of any land from which a tenant has been unlawfully ejected by the landlord or any person claiming under or through the landlord;

(6) subject to the provision of sub-section (5) of section 74A, all suits by or against a village headman for a declaration of title in, possession of ejectment from, or recovery of his office or land comprised in his village-headmans tenancy, whether based or not on an allegation of the existence or non-existence of the relationship of landlord and tenant and whether brought or not by or against the landlord of such land];

(7) all suits, by landlords and others in receipt of the rent of land, against any agents employed by them in the management of land or the collection of rents, or the sureties of such agents for money received or accounts kept by such agents in the course of such employment or for papers in their possession; and

(8) all suits and applications in respect of which jurisdiction is conferred by this Act on the Deputy Commissioner:

3[Provided that the Deputy Commissioner may subject to such rules as may be made in this behalf under section 264, transfer any particular suit or application or any class of suits or applications cognizable by him under this section to a competent Civil Court for

trial.]

1. Subs. by Act 6 of 1920.
2. Subs. by Act 5 of 1923.
3. Ins. by Act 5 of 1923.

139A. Exclusive Jurisdiction Of Deputy Commissioner In Certain Cases :-

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1[Subject to the provision of Chapter XII, no Court shall entertain any suit concerning any matter in respect of which an application is cognizable by the Deputy Commissioner under section 139, and the decision of the Deputy Commissioner on any such application shall, subject to the provisions of this Act relating to appeal, be final.]

1. Ins. by Act 6 of 1920.

140. Collective Suits Or Application :-

Subject to such rules (if any) as may be made in this behalf under section 264, a suit may be instituted before, or an application may be made to the Deputy Commissioner collectively by or against any number of tenants holding land in the same village; and an allegation that such tenants are wrongly joined shall be no ground for dismissing a suit or refusing to hear an application;

but no order shall be passed in any such collective suit or on any such collective application unless the officer making the same is satisfied that all parties have had an opportunity to appear and make objection to any claims preferred against them;

and if at any time it appears to the Deputy Commissioner that the question between any two of the parties of whom one is so joined with others cannot conveniently be jointly tried or heard, the Deputy Commissioner may order a separate trial or hearing.

141. Order Or Decree In Collective Suit Or On Collective Application To Specify How Far It Effects Each Tenant :-

Every order or decree passed in any case which it tried or heard jointly under section 140 shall specify the extent to which each of the tenant named in the order or decree shall be affected thereby.

142. Suit By Co-Sharer Landlord For Rent :-

(1) Notwithstanding anything contained in section 257, a co-sharer landlord may institute a suit to recover from a tenant --

(a) his share of the rent, when such share is collected separately,

or

(b) the whole of the rent due to the plaintiff and his co- sharers, when all or any of his co-sharers who refuse to join in the suit are made defendants therein.

(2) When, in a suit instituted under clause (b) of sub-section (1), the plaintiff is unable to ascertain what rent is due for the whole tenure or holding, or whether the rent due to the other co-sharer landlords has been paid or not, owing to the refusal or neglect of the tenant or the said landlords to furnish him with correct information on these points or either of them, the Deputy Commissioner shall determine --

(i) what sum (if any) is due to the plaintiff for rent, interest thereon and costs, and

(ii) what sums (if any) are due to the said landlords, respectively on account of their share of the rent and interest thereon, for the period in respect of which the suit is brought; and shall decree the suit accordingly.

(3) Notwithstanding anything contained in Explanation I to section 47, or in section 196, a decree awarding to a plaintiff a sum referred to in clause (i) of sub-section (2) shall, as regards the remedies for enforcing the same, be as effectual as a decree obtained by a sole landlord or an entire body of landlords in a suit brought for the rent due to all the co-sharers.

(4) When the sums due from a tenant to any co-sharer landlord are determined under clause (ii) of sub-section (2) in respect of any period, then no further suit shall lie against such tenant for rent alleged to be due to such landlord in respect of that period.

143. Institution Of Suits By Presentation Of Statement Of Claim :-

Suits before the Deputy Commissioner under this Act shall be instituted by presenting a statement of claim showing-

(a) the name, description and place of abode of the plaintiff;

(b) the name, description and place of abode of the defendant so far as they can be ascertained;

(c) the substance to the claim; and

(d) the date of the cause of action.

144. Additional Particulars Required In Statement Of Claim In Certain Suits And In Certain Application :-

(1) In all suits and applications before the Deputy Commissioner for

the recovery of an arrear of rent or for the ejectment of a tenant from any tenure or holding or for the recovery of occupancy or possession of any tenure or holding, the statement of or application shall contain, in addition to the particulars required by section 143-

- (a) a specification of situation and designation of the land held by the tenant, and

- (b) a specification of the extent and boundaries of such land, or (if the plaintiff is unable to specify the extent or boundaries) a description sufficient for the identification of the land.

(2) In all suits and applications referred to in sub-section (1), and in all other suits and applications before the Deputy Commissioner under this Act relating to the rent of land or to any right or easement arising out of land.

If a survey has been made and a record-of-rights has been finally published under this Act or under any law in force before the commencement of this Act, in respect of the land to which the suit or application relates,

the statement of claim on application shall further contain the following particulars, namely: --

- (i) a list of the survey plots comprised in the tenancy,

- (ii) a statement of the rental of the tenancy according to the record-of-rights, and

- (iii) a copy of all entries in the record-of-rights, in regard to the subject-matter of the suit or application,

unless the Deputy Commissioner is satisfied for reasons to be recorded in writing that it is not necessary that such particulars or any of them should be furnished or that the plaintiff was prevented by any sufficient cause from furnishing such particulars or any of them:

Provided that, in all cases in which the Deputy Commissioner admits a statement of claim or application which does not contain the said particulars, he may direct the supply, without payment of fee of a verified or certified copy of, or extract from, the record-of-rights relating to the tenancy and the question in dispute in the suit or application.

(3) Where, since the record-of-rights was prepared and finally published, an alteration has been made in the area of the tenancy, the statement of claim must further show how the amount of the rent claimed in the suit has been calculated.

145. Substitution Of Copies Or Extracts For Original Documents Admitted In Evidence :-

When any account books, rent-rolls, collection papers, measurement-papers or maps have been produced by the landlord before the Deputy Commissioner in any suit or proceeding under this Act, and have been admitted in evidence in the suit or proceeding or in any inquiry pending before the Deputy Commissioner;

copies of extracts from, such documents, certified by a duly authorised officer of the Court of the Deputy Commissioner to be true copies or extracts, may, with the permission of the Deputy Commissioner, be substituted on the record for the originals, which may then be returned to the landlord;

and thereafter copies of extracts, so certified, may be admitted in evidence in any other suit or proceeding instituted before the same or any other Deputy Commissioner under this Act, unless the Deputy Commissioner before whom they are produced sees fit to require the production of the originals.

146. Statement Of Claim By Whom To Be Presented :-

The statement of claim shall be presented by the plaintiff or by an agent of the plaintiff who is acquainted with the facts of the case.

147. Signature And Verification Of Statement Of Claim :-

The statement of claim shall be subscribed and verified at the foot by the plaintiff or his agent, in the following form: --

"I, A.B., do declare that the above statement is true to the best of my knowledge, information and belief."

148. Production Of Documents By Plaintiff :-

(1) If the plaintiff relies in supports of his claim on any document in the possession he must produce such document before the Deputy Commissioner at the time of presenting his statement of claim.

(2) If such document be not so produced, it shall not afterwards be admitted unless the Deputy Commissioner, for sufficient reason to be recorded in writing, thinks fit to admit it.

149. Production Of Documents By Defendant :-

If the plaintiff requires the production of any document in the possession or power of the defendant, he may, at the time of presenting his statement of claim, deliver a description of the

document to the Deputy Commissioner, in order that the defendant may be directed to produce the document.

150. Return Or Amendment Of Statement Of Claim :-

If the statement of claim does not contain the several particulars required by section 143 or by sections 143 and 144, as the case may be, or is not subscribed and verified as required by section 147, the Deputy Commissioner may return the statement of the plaintiff, or may at his discretion allow it to be amended.

151. Issue Of Summons To Defendant :-

If the statement of claim is in improper form, the Deputy Commissioner shall direct the issues of a summons to the defendant in the prescribed form 1 [and also of a copy of the plaint or, if there are two or more defendants, of such portion of the plaint as relates to him].

1. Ins. by Act 6 of 1920.

152. Attendance Of Defendant Personally Or By Agent :-

If the plaintiff requires the personal attendance of the defendant and satisfies the Deputy Commissioner that such personal attendance is necessary, or if the Deputy Commissioner of his own accord required such personal attendance, the summons shall contain an order for the defendant to appear personally on a day to be specified in the summons; otherwise the summons shall order the defendant to appear personally or by an agent who is acquainted with the facts of the case.

153. Production Of Documents And Witnesses :-

The said summons shall order the defendant to produce any document which he has in his possession and of which the plaintiff demands inspection, or upon which the defendant may intend to rely in support of his defence;

and shall also enjoin the defendant to bring his witnesses with him if they are willing to attend without issue of process.

154. Deposit Of Cost Of Serving Summons :-

If the amount of the cost of serving the summons be not deposited in the prescribed manner, the claim shall be rejected; but in such

case the plaintiff may present another statement of claim at any time within the period provided by this Act for the limitation of suits.

155. Procedure When Neither Party Appears :-

If on the day fixed by the summons for the appearance of the defendant, or on any subsequent day to which the hearing of the case may be postponed prior to the framing of issues as provided in section 167 neither of the parties appears in person or by agent the case shall be struck off with liberty to the plaintiff to bring a fresh suit unless precluded by the provisions for the limitation of suits contained in this Act.

156. Procedure When Only The Defendant Appears :-

If on such day, only the defendant appears the Deputy Commissioner shall dismiss the suit unless the defendant admits the claim or part thereof in which case the Deputy Commissioner shall pass a decree against the defendant upon such admission without costs and where part only of the claim has been admitted shall dismiss the suit so far as it relates to the remainder: Provided that such decree if there be more than one defendants, shall be only against the defendant who makes the admission.

157. Procedure When Only The Plaintiff Appears :-

If on such day, only the plaintiff appears, the Deputy Commissioner upon proof that the summons has been duly served shall proceed to examine the plaintiff or his agent, and, after considering the allegations of the plaintiff and any documentary or oral evidence adduced by him may either dismiss the case or postpone the hearing of it to a future day for the attendance of any witness whom the plaintiff may wish to call, or decree the suit *ex parte* against the defendant.

158. Production Of Documents By Defendant :-

If the defendant relies on any document in support of his defence, he shall produce it before the Deputy Commissioner at the first hearing of the suit; and if such document is not so produced it shall not afterwards be admitted, unless Deputy Commissioner for sufficient reasons to be recorded in writing, thinks fit to admit it.

159. Hearing Of Defendant On Day To Which Case Is Postponed :-

If the defendant appears on any subsequent day to which the hearing of the suit may be postponed under section 157, the Deputy Commissioner may upon such conditions (if any) as to costs or otherwise as he may think proper, allow the defendant to be heard in answer to the suit as if he had appeared on the day fixed for his attendance.

160. Exemption Of Women From Personal Attendance :-

A female plaintiff or defendant shall not be required to attend in person if of a rank or class which according to the customs and manners of the country, would render it improper for her to appear in public.

161. Employment Of Agents :-

(1) Any party to a suit before the Deputy Commissioner under this Act may employ an agent to conduct the case on his behalf; but the appointment of an agent shall not excuse the personal attendance of the plaintiff or defendant in cases where his personal attendance is required by the summons or by any order of the Deputy Commissioner.

(2) Processes served on any such agent shall be as effectual for all purposes in relation to the suit as if they had been served on the party in person and all the provisions of this Act relating to the service of processes on a party to the suit shall be applicable to the service of processes on such agent.

162. Power To Grant Time Or Adjourn Hearing :-

The Deputy Commissioner may in any case grant time to the plaintiff or defendant to proceed in the prosecution or defence of a suit, and may also from time to time, in order to secure further evidence, or for other sufficient reason to be recorded by him, adjourn the hearing or further hearing of any case in such manner as he may think fit.

163. Examination And Cross-Examination Of Parties Or Their Agents And Of Witnesses, Written Statement By Defendant :-

(1) When both parties appear in person on the day named in the summons, or upon any subsequent day to which the hearing of the case may be adjourned under section 162, the Deputy Commissioner 1[may proceed to examine them, and if he examines them] either party or his agent may cross-examine the other.

(2) If either of the parties is not bound to attend personally, any agent by whom he appears 1[may] be examined and cross examined in like manner as the party himself would have been if he had attended personally.

(3) At his first appearance, or at any time before the issues are framed the defendant may with the leave of the Deputy Commissioner, file a written statement of his defence.

(4) Such statement shall be verified in the manner provided in section 147.

(5) If either of the parties produces a witness on the day aforesaid, the Deputy Commissioner may take the evidence of such witness.

1. Subs. by Act 6 of 1920.

164. Conduct And Record Of Examination :-

The examination of the parties or their agents shall be conducted according to the law for the time being in force for the examination of witnesses.

(2) The depositions of parties, agents and witnesses shall be recorded in English 1[***].

1. Repealed by ibid.

165. Power To Direct Attendance Of Party Whose Agent Cannot Answer Material Question :-

If the agent of either party is unable to answer any material question relating to the case, which the Deputy Commissioner is of opinion that the party whom he represent oughts to answer and likely to be able to answer if interrogated in person, the Deputy Commissioner may postpone the hearing of the case to a future day, and may direct that such party shall attend in person on such day,

and, if such party fails to appear in person on the day appointed, the Deputy Commissioner may decide the suit as in case of default, or make such other order as he may deem proper in the circumstances of the case.

166. Decree When To Be Made :-

If after the examination 1[referred to in] section 163, and after the examination of any witness who may attend to give evidence on behalf of either of the parties and after a consideration of the documentary evidence adduced, a decree can properly be made without asking further evidence, the Deputy Commissioner shall make a decree accordingly.

1. Subs. by Act 6 of 1920.

167. Power To Postpone Trial To Take Further Evidence :-

If it appears that the parties are at issue on any question upon which it is necessary to hear further evidence, the Deputy Commissioner shall frame issues and shall fix a day for the examination of witnesses and the final hearing of the suit; and the trial shall take place on that day, unless there be sufficient reason for adjourning it, which reason shall be recorded by the Deputy Commissioner.

168. Production Of Witnesses :-

The parties shall produce their witnesses on the day of the trial; and, if either party requires assistance to procure the attendance of a witness on such day, either to give evidence or to produce a document, he shall apply to the Deputy Commissioner in sufficient time before such day to enable the witness to be summoned to attend on that day; and, if the application be made in sufficient time as aforesaid, the Deputy Commissioner shall issue a summons requiring such witness to attend.

169. Procedure When Neither Party Appears On Day Fixed For Final Hearing Of Suit :-

(1) If, on the day fixed for the final hearing of the suit, neither of the parties appears, the case shall be struck off under the conditions provided in section 155.

(2) If on such day, only one of the parties appears, the suit may be tried and determined, in the absence of the other party, upon such proof as may then be before the Court.

170. Judgment :-

(1) The Deputy Commissioner shall pronounce judgment in open Court.

(2) The judgment shall be written in English and shall contain the reasons for the decision, and shall be dated and signed by the Deputy Commissioner at the time when it is pronounced. 1[* *]

1. Repealed by ibid.

171. Local Inquiries :-

(1) The Deputy Commissioner may, at any stage of suit or other proceeding before him under this Act --

(a) cause a local inquiry and report respecting the matter in dispute to be made by any officer subordinate to him, or by any other officer of the 1[Government] with the consent of the authority to whom such officer is subordinate, or by any other person whom the Deputy Commissioner may deem fit; or

(b) himself proceed to the spot and make such local inquiry in person.

(2) The provisions of the law for the time being in force, relating to local inquiries by Commissioners, under orders of Civil Courts, shall apply to any local inquiry made under clause (a) of sub-section (1), and, so far as they are applicable, also to inquiries made under clause (b) of that sub-section.

(3) Where the Deputy Commissioner makes a local inquiry in person he shall forthwith record on the proceedings any relevant facts which he has observed in the course of the inquiry; and such record shall be received as evidence in the suit or other proceeding aforesaid.

1. Subs. by A.L.O. for "Crown".

172. Payment Into Court By Defendant, After Tender To Plaintiff :-

(1) The defendant in any suit before the Deputy Commissioner under this Act may, if he has duly tendered the same to the plaintiff before the institution of the suit pay into Court such sum of money as he may consider to be due to the plaintiff without paying in any costs incurred by the plaintiff up to the time of such payment, and such sum shall immediately be paid out of Court to the plaintiff.

(2) If, after such payment the plaintiff elects to proceed with the suit and ultimately obtains a decree for no more than was paid into Court, he may be charged with all costs of the suit incurred by the defendant but, if the plaintiff ultimately obtains a decree for more than was paid into Court, the defendant may be charged with all

costs of the suit.

173. Payment Into Court By Defendant, Without Prior Tender To Plaintiff :-

(1) The defendant in any suit before the Deputy Commissioner under this Act may, without having tendered the same to the plaintiff before the institution of the suit pay into Court such sum of money as he may consider to be due to the plaintiff, together with the costs (to be fixed by the Deputy Commissioner, if necessary, as upon a suit originally instituted for the amount so paid into Court) incurred by the plaintiff up to the time of such payment; and such sum shall immediately be paid out of Court to the plaintiff.

(2) If, after such payment, the plaintiff elects with the suit, and ultimately obtains a decree for no more than was paid into Court, he may be charged with all costs of the suit incurred by the defendant subsequently to such payment; but if the plaintiff ultimately obtains a decree for more than was paid into Court the defendant may be charged with costs as upon a suit originally instituted for the whole amount for which the plaintiff ultimately obtains a decree, but shall have credit thereout for the amount of costs paid into Court by him in the first instance.

174. Prohibition Of Interest On Sums Paid Into Court :-

From the date on which any sum is paid into Court by the defendant under section 172 or section 173, no interest shall be allowed to the plaintiff on such sum, whether it be in full satisfaction of his claim or falls short thereof.

175. Power To Award Damages To Plaintiff In Rent-Suit :-

Rep. by the Chota Nagpur Tenancy (Amendment) Act, 1938 (Bihar Act 2 of 1938) s. 24.

176. Power To Award Compensation To Defendant In Rent-Suit :-

Rep. by the Chota Nagpur Tenancy (Amendment) Act, 1938 (Bihar Act 2 of 1938), s. 24.

177. Procedure Where Third Party Claims Right To Receive Rent :-

When in any suit before a Deputy Commissioner under this Act between a landlord and a tenant 1[the tenant or a third person pleads that the right to receive the rent of the land or tenure cultivated or held by the tenant belongs to such third person] on the ground that such third person or a person through whom he claims has actually and in good faith received and enjoyed such rent before and up to the time of the institution of the suit, such third person shall be made a party to the suit, and the question of the actual payment of the rent to such third person in good faith shall be inquired into, and the suit shall be decided according to the result of such inquiry:

Provided that such decision shall not affect the right of any party, who may have a legal title to such rent, to establish such title by suit in a Civil Court, if instituted within one year from the date of the decision.

1. Subs. by Act 6 of 1920.

178. Suit For Ejectment Of Non-Occupancy Raiyat-- Cancelment Of Lease Of Any Tenant For Arrear Of Rent :-

(1) Any landlord desiring to eject a non-occupancy-raiyat on the ground that he has tiled to pay an arrear of rent or to cancel the lease of any tenant on account of the non-payment of arrears of rent, may sue for such ejectment or cancelment and for the recovery of the arrears in the same suit, or may, in a suit for such ejectment or cancelment, adduce any unexecuted decree for arrears of rent as evidence of the existence of such arrears.

(2) In all case of suits for the ejectment of a non-occupancy-raiyat for non-payment of arrears of rent or for the cancelment of a lease for non-payment of arrears of rent, the decree shall specify the amount of the arrear and if such amount together with the interest and costs of suit, be paid into Court within thirty days from the date of the final decree, the decree shall not be executed.

(3) The Deputy Commissioner may, for special reasons to be recorded in writing extend the period of thirty days mentioned in sub-section (2).

Section

178A. Non-Occupancy Raiyat Entitled To Appropriate Produce From The Holding Grown Before The Delivery Of Possession :-

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1[A non-occupancy-raiyat against whom decree or order of eviction has been made

under section 178 shall be entitled to cut and appropriate the crop grown by him on the holding or portion thereof before but not after the delivery of possession through the Court.]

1. Ins. by Act 25 of 1947.

179. Power Of Deputy Commissioner To Grant Lease To Raiyat In Default Of Landlord :-

If a decree is given for the grant of a lease to raiyat and the landlord fails, for a period of three months after the date of the decree, to grant such lease, the Deputy Commissioner may grant a lease in conformity with the terms of the decree, under his own hand and seal; and such lease shall have the same force and effect as if granted by the landlord.

180. Procedure Where Tenant Fails To Deliver Counterpart Engagement To Landlord :-

If a decree is given for the delivery of a counterpart after engagement by a tenant to a landlord, and the tenant fails, for a period of three months after the date of the decree, to deliver such counterpart, the decree shall be evidence of the amount of rent claimable from such tenant, and copy of the decree under the hand and seal of the Deputy Commissioner shall have the same force and effect as a counterpart engagement delivered by the tenant to the landlord.

181. Limitation Of Time For Application For Execution :-

1[No. application for the execution of a decree or order passed by the Deputy Commissioner under this Act shall be entertained unless such application be made] within three years from --

(a) the date on which the decree or order is signed, or

(b) where there has been an appeal, the date of the final decree or order of the Appellate Court, or

(c) where there has been a review of judgment, the date of the decision passed on the review.

1. Subs. by Act 6 of 1920.

Section

181A. Application For Execution By Assignee Of Rent-Decree :-

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1[An application for execution of a decree for arrears of rent obtained by a landlord shall not be made by an assignee of the decree unless the landlords interest in the

land has become and is vested in the assignee.]

1. Ins. by ibid.

182. Decree And Orders By What Court To Be Executed :-

A decree or order passed by a Deputy Commissioner under this Act may be executed either by his own Court or by any other prescribed Court.

183. Form Of Application For Execution :-

Every application for the execution of a decree or order passed by a Deputy Commissioner under this Act shall be in writing, shall be made in the prescribed form, and shall be verified by the applicant or his agent in the form provided in section 147.

184. Issue Of Process Of Execution :-

Process of execution may be issued against either the person or the property of a judgment debtor, but shall not be issued simultaneously against both person and property :

1[Provided that -

(a) process of executions shall not be issued against the person of a judgment debtor in satisfaction of a decree for arrears of rent due in respect of a holding or of a Bhuinhari tenure;

(b) the movable property of the judgment-debtor shall not, without his consent in writing be attached or sold in execution of a decree for rent due in respect of a holding unless the decree cannot be satisfied by the attachment and sale of the holding for the arrears of the rent of which the decree was passed.]

1. Ins. by Act 2 of 1938.

185. Form Of Warrant Of Execution Against Person Or Movable Property :-

Every warrant of execution against the person or movable property of a judgment-debtor shall be in the prescribed form.

186. Exemption From Attachment And Sale :-

The following particulars shall be exempted from attachment and sale in execution of any decree or order passed by a Deputy Commissioner under this Act namely : --

(a) the necessary wearing apparel and bedding of the judgment-debtor, his wife and children;

- (b) tools and implements of husbandry and such cattle and seed grain as may in the opinion of the Deputy Commissioner, be necessary to enable the judgment-debtor to earn his livelihood as an agriculturist;
- (c) the materials of houses and other buildings belonging to and occupied by agriculturists;
- (b) books of account;
- (e) any right of personal service;
- (f) stipends and gratuities allowed to 1[* * *] pensioners of the 2[Government] and political pensions;
- (g) the wages of labourers and domestic servants;
- (h) a right to future maintenance :

Provided that nothing in this section shall be deemed to exempt the materials of houses and other buildings from attachment or sale in execution of decrees for rent.

Explanation. --The particulars mentioned in clauses (t) and (g) are exempt from attachment or sale before or after they are actually payable.

1. Repealed by A.O.

2. Subs. by A.L.O. for "Crown."

186A. Restrictions On The Execution Of Decree :-

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1[A decree for arrears of rent obtained against a raiyat or an under-raiyat shall not be executed --

(a) by the detention in the civil prison of the judgment-debtor, or

(b) by the sale of houses and other buildings with the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment belonging to the raiyat or under- raiyat and occupied by him :

Provided that any such house or building and the materials and the sites thereof and the lands immediately appurtenant thereto and necessary for their enjoyment may be sold in execution of a decree for arrears of rent due in respect of site of such house or building.]

1. Ins. by Act 2 of 1938.

187. Indication Of Movable Property To Be Seized :-

(1) Any movable property required to be seized under warrant of execution shall, if practicable be described in a list to be furnished by the judgment-debtor; but, if the creditor is unable to furnish such list, he may apply for a general seizure of the debtors effects to the amount of the judgment and costs.

(2) In either case, the property to be seized shall be pointed out by the creditor or his agent to the officer entrusted with the execution of the warrant.

188. Duration Of Warrant Of Execution :-

Every warrant of execution shall bear date of the day on which it is signed by the Deputy Commissioner, and shall continue in force for such period as the Deputy Commissioner may direct, not being more than sixty days from such date.

189. Second And Successive Warrants Of Execution :-

Second and successive warrants of execution may be issued by order of the Deputy Commissioner, on the application of the judgment-creditor, after the expiration of the period fixed for the continuance in force of a previous warrant.

190. Notice When To Be Given Before Issue Of Warrant Of Execution :-

(1) A warrant of execution shall not be issued upon any decree or order without previous notice to the party against whom execution is applied for, if when application for the issue of the warrant is made a period of more than one year has elapsed from the date of the decree or order, or from the date of the last previous application for execution.

(2) A warrant of execution shall not be issued against the heir or other representation of a deceased party without previous notice to such representative to appear and be heard.

191. Procedure When Judgment Debtor Is Arrested :-

(1) If a warrant is issued against the person of a judgment-debtor, the officer charged with execution of the warrant shall bring him with all convenient speed before the Deputy Commissioner.

(2) If the decree in execution of which the judgment-debtor was arrested is a decree for money, and if he does not immediately deposit in Court the full amount specified in the warrant or make arrangements, satisfactory to the judgment-creditor, for the payment of the same, or satisfy the Deputy Commissioner that he has no present means of paying the same.

The Deputy Commissioner shall send him to the civil jail there to remain for such time as may be directed by warrant addressed to the keeper of the jail, unless in the meantime he pays the said amount:

Provided that no judgment-debtor shall be imprisoned in execution

of a decree under this Act for a longer period than six months or (if the decree is for the payment of a sum of money not exceeding fifty rupees) six weeks.

(3) If the decree in execution of which the judgment-debtor was arrested is a decree for the delivery of papers or accounts and if the papers or accounts are not immediately delivered by him to the Deputy Commissioner.

The Deputy Commissioner may commit him to the civil jail, thereto remain for such time, not exceeding six months as the Deputy Commissioner may direct, unless in the meantime he delivers the papers or accounts according to the terms of the decree.

192. Further Proceeding After Discharge From Jail :-

(1) When any judgment-debtor has been discharged from the civil jail, he shall not be imprisoned as second time under the same decree or order.

(2) If the amount due under such decree or order does not exceed fifty rupees, the Deputy Commissioner may declare such discharged person to be absolved from liability thereunder.

(3) In other cases the discharge shall not extinguish the liability of the discharged person under such decree or order or exempt property belonging to him from attachment in execution thereof.]

193. Diet-Money For Subsistence Of Prisoners :-

(1) Any person who applied for a warrant of execution against the person of a judgment-debtor shall deposit in Court at the time of the issue of the warrant diet-money for thirty days, at such rate as the Deputy Commissioner may direct for the subsistence of the prisoner.

(2) The said person shall also pay diet-money, at the same rate before the commencement of each succeeding month of the imprisonment; and, if he fails to make any such payment, the prisoner shall be discharged.

(3) All diet- money spent in providing subsistence for any prisoner shall be added to the costs in the suit and any diet money not so spent shall be returned to the person who paid it.

194. Execution Of Decree Or Order For Ejectment Or Reinstatement Of Cultivator :-

(1) If the decree or order is for the ejectment of any cultivator from

land occupied by him or for the reinstatement of any cultivator in the occupancy of land from which he has been ejected the decree or order shall be executed by giving the possession or occupancy of the land to the person entitled by the decree or order to such possession or occupancy.

(2) If any opposition to the execution of the order for giving such possession or occupancy is made by the party against whom the order is made, the Deputy Commissioner shall in the exercise of his powers as a Magistrate, give effect to the order.

195. Execution Of Decree Or Order For Cancelment Of Lease, For Ejectment Or For Reinstatement Of Tenant Not Being An Actual Cultivator :-

If the decree or order is for the cancelment of any lease or the ejectment of any tenant (not being an actual cultivator) or for the reinstatement of any tenant (not being an actual cultivator), in the possession of tenancy from which he has been ejected the decree or order shall be executed --

(a) by proclaiming its substance to the cultivators or other occupants of the tenancy by beat of drum, or

(b) by notification reciting the substance of the decree or order and affixed in some conspicuous place within, or adjacent to, the tenancy, or

(c) in such other manner as may be prescribed.

196. Execution Of Decree Or Rent Given In Favour Of Sharer In Undivided Estate Or Tenure :-

If a decree is given by the Deputy Commissioner under this Act in favour of a sharer in a joint undivided estate or tenure, for money due to him on account of his share of the rent of any tenure comprised in such undivided estate or tenure,

application for the sale of such tenure shall not be received unless execution has first been taken out against any movable property which the judgment-debtor may possess within the district in which the suit was instituted and unless the sale of such property, if any, has proved insufficient to satisfy the decree;

and such tenure may then, with the previous sanction of 1[Deputy Commissioner] but not otherwise be sold in execution of the decree, in the manner in which any other immovable property may be sold in execution of a decree for money under the provisions of

clause (b) of section 210.

1. Subs. by Act 25 of 1947.

197. Execution Of Rent Decree Obtained By A Co-Sharer Landlord :-

When one or more co-sharer landlords applies or apply for the execution of a decree obtained in a suit instituted under clause (b) of section 142, by the sale of a tenure or holding the Court executing such decree shall, before proceeding to sell the tenure or holding, give notice of the application for execution to the other co-sharers.

198. Execution Against Immovable Property In Certain Cases, If Judgment Not Satisfied :-

In the execution of any decree or order by the Deputy Commissioner under the Act for the payment of money, not being money due or recoverable as an arrear of rent, if satisfaction of the decree or order cannot be obtained by execution against the person or movable property of the debtor within the district in which the suit was instituted, the judgment-creditor may apply for execution against any immovable property belonging to such debtor, and such immovable property may, with the sanction of the Commissioner, but not otherwise, be brought to sale in the manner provided in clause (b) of section 120.

199. Notification Of Intended Sale Of Movable Property, And Custody Of Property :-

(1) For the purpose of executing a warrant of execution issued by the Deputy Commissioner under this Chapter against the movable property of a judgment-debtor, the officer charged with the execution of the warrant shall prepare a list of the property pointed out by the judgment-creditor, and shall publish a proclamation specifying the day upon which the sale is intended to be held, and a copy of the said list, at the intended place of sale and at the residence of the debtor.

(2) A copy of the said list and proclamation shall be transmitted to the Deputy Commissioner, and shall be affixed in his office.

(3) Until the day of sale, the said property shall remain in the custody of the officer executing the warrant 1[or of some other

person to whom such officer by a writing under his hand commit the custody thereof. Such person shall be deemed to be a public servant within the meaning of the Indian Penal Code (45 of 1860).

1. Ins. by Act 6 of 1920.

200. Interval Between Seizure And Sale :-

No sale of any moveable property (other than perishable property) seized in execution under this Chapter shall be made until the expiration of a period of ten days after the day on which the property was so seized.

201. Place And Manner Of Sale :-

(1) Such sale shall be held at the place where the property deposited, or at the nearest market or other place of public resort if the officer executing the warrant thinks it is likely to sell there to better advantage.

(2) The property shall be sold by public auction, in one or more lots as the officer executing the warrant may think advisable and if the judgment-debtor, and the costs of the execution and sale are realised by the sale of a portion of the property; the execution shall immediately be withdrawn with respect to the remainder.

202. Prohibition Of Purchase By Officers :-

Officers executing warrants for the sale of property under this Chapter, and all persons employed by or subordinate to, such officers, are prohibited from purchasing either directly or indirectly any property sold by such officers.

203. Postponement Of Sale If Fair Price Be Not Offered :-

If on the property being put up for sale, no price which the officer executing the warrant considers fair is offered for it, and the owner of the property, or some person authorized to act on his behalf applies to have the sale postponed until the next day, or the next market day if a market be held at the place of sale or in the vicinity; the sale shall be postponed until such day, and shall then be completed at whatever price may be offered for the property.

204. Payment Of Purchase-Money And Delivery Of Property To Purchaser :-

(1) The price of every lot shall be paid at the time of sale or as soon as thereafter as the officer executing the warrant may direct, and in default of such payment, the property shall again be put up and sold.

(2) When the purchase-money has been paid in full the officer executing the warrant shall deliver the property to the purchaser with a certificate describing the property and stating the price paid.

205. Application Of Proceeds Of Sale :-

(1) From the proceeds of the sale the officer executing the warrant shall make a deduction at the rate of one anna in the rupee, on account of the costs of sale, and shall transmit the amount so deducted to the Deputy Commissioner, in order that it may be credited to the 1[State] Government.

(2) The said officer shall deal with the rest of the proceeds in the prescribed manner.

1. Subs. by A.L.O. for "Provincial."

206. Procedure Where Third Party Claims Interest In Property Seized :-

(1) If before the day fixed for the sale, a third party appears before the Deputy Commissioner and claims a right or interest in any of the movable property seized in execution, the Deputy Commissioner shall examine such party or his agent according to the law for the time being in force relating to the examination of witness, and, if he sees sufficient reason for so doing may stay the sale of such property.

(2) The Deputy Commissioner shall, after taking evidence, adjudicate upon such claim, and shall make such order thereupon as he thinks fit.

(3) If the claimant fails to establish his right to the property seized in execution the Deputy Commissioner may, by his order under sub-section (2), award to the judgment-creditor against the claimant, in addition to the costs of the proceeding such sum as the Deputy Commissioner may consider sufficient to cover any loss of interest or any other damage which the judgment-creditor has sustained by reason of the postponement of the sale.

(4) The party against whom any order is passed by the Deputy Commissioner under this section may, at any time within one year from the date of the order, bring a suit in the Civil Court to establish his right:

Provided that if the property has been sold the suit shall not be for the recovery of the property, but for damages against the judgment-creditor by whom the property was brought to sale.

207. Irregularities Not To Vitate Sale :-

No irregularity in publishing or conducting a sale of movable property under a warrant of execution issued under this Chapter shall vitiate such sale but nothing contained in this section shall bar any person who sustains damages by reason of any such irregularity from recovering damages by suit in the Civil Court, if instituted within one year from the date of the sale.

208. Sale Of Tenure Or Holding In Execution Of Decree For Arrears Of Rent :-

(1) When a decree passed by the Deputy Commissioner under this Act is for an arrear of rent due in respect of a tenure or holding, the decree-holder may apply for the sale of such tenure or holding and the tenure or holding may thereupon be brought to sale in execution of the decree, 1[according to the procedure laid down in section 208 B to 208D] :

Provided 2[firstly] that the purchaser of a tenure at any such sale shall not be entitled to annul any lease, right or tenancy referred to in clauses (a) to 1[f] of section 14 of this Act:

1[Provided secondly] also that 1[Deputy Commissioner] may, by order in any case in which he may consider it desirable so to do --

(a) prohibit the sale of any tenure or portion thereof, or

(b) stay any such sale for any period specified in the order:

1[Provided thirdly] that any sale of resumable tenure under this section shall not affect the right of the grantor or his successor in title to resume such tenure but shall be made subject to such right:

3[Provided fourthly] that when the holding of an aboriginal raiyat or of a raiyat who is a member of a scheduled caste is sold, such land shall be sold to the highest bidder who is an aboriginal or a member of a scheduled caste, as the case may be and shall not be sold to any person other than an aboriginal or a member of a scheduled caste unless no aboriginal or member of a scheduled caste bids for such land an amount which is not less than the amount specified in the proclamation of sale.

1[1a] Notwithstanding anything to the contrary contained in sub-section (1) or in any other provision of this Act, or in any other law, where a decree holder applied for the sale of an occupancy holding,

only that portion of such holding shall be sold the proceeds of the sale of which will be sufficient to satisfy the amount due under the decree, and such portion shall not be sold at a price lower than the price specified in the proclamation of sale; and the Deputy Commissioner shall, before putting up any such portion of holding for sale estimate the value of the whole holding and that portion of the holding the proceeds of the sale of which he considers will be sufficient to satisfy the decree and shall specify the price of such portion in the sale proclamation:

1[Provided firstly] that if the decree-holder specifies which portion of the holding should be sold the Deputy Commissioner shall order that such portion or so much of such portion as may be seem to him necessary to satisfy the decree shall be sold and the proceeds paid as provided in this section.

2[Provided secondly] that if there is any incumbrance on any portion of such holding the Deputy Commissioner shall not order such portion to be sold unless in his opinion, the decree cannot be satisfied without the sale of such portion.

2[Provided thirdly] that if the highest amount bid for the property included in the sale proclamation is less than the price specified for such property in the proclamation, the Deputy Commissioner may sell the property for such highest amount, if the decree-holder consents in writing to forego so much of the amount decreed as is equal to the difference between the highest amount bid and the price specified for such property in the sale proclamation:

2[Provided fourthly that if the highest bid for such land is less than the amount specified in the proclamation of sale, the decree-holder shall be bound to bid up to that amount and purchase the portion of the holding included in the sale proclamation.]

(2) When a warrant of execution has been issued under this Chapter against the person on movable property of the judgment-debtor, no application shall be received under sub- section (1) while such warrant remains in force.

2[(3) Nothing in this section shall authorise the sale of a tenure or holding or portion thereof except in execution of a decree for an arrear of rent.]

1. Subs. by Act 25 of 1947.

2. Ins. by *ibid*

3. Ins. by Act 2 of 1938.

208A. Distribution Of Rent Of Holding A Portion Of Which Is Sold In Execution Of Decree For Arrears Of Rent :-

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1[Where a portion of an occupancy holding has been sold in execution of a decree for arrears of rent due in respect of such holding, the holding consequent upon the sale shall be binding on the landlord. The Deputy Commissioner shall distribute the rent of the holding between the purchaser of the said portion and the tenant of such holding and such distribution of rent shall be binding on the landlord.

1. Ins. by Act 25 of 1947.

208B. Procedure To Be Followed In Bringing To Sale Tenure Or Holding Or Portion Thereof In Execution Of Rent Decree

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Where a tenure or holding or portion thereof is sold in execution of a decree for an arrear of rent, the following procedure shall be observed, namely:-

(a) The Court holding the sale shall cause to be hung up in its own Court and in that of the Deputy Commissioner of the district in which the land comprised in the tenure or holding to be sold is situated, and to be affixed on some conspicuous place on the land in the town or village in or nearest to which the said land is situated a notice for the sale of the said tenure or holding on some fixed date not less than twenty days from the hanging up of the said notice in the Court in which the decree is in course of execution.

(b) The said notice shall specify, in the words used in the plaint in the suit in which the decree was made the name of the village, estate and pargana, or other local division, in which the land comprised in the said tenure or holding is situated, the yearly rent payable and the gross amount recoverable under the said decree.

(c) If the sum due under the decree, together with interest to date of payment and all costs of processes, be paid into Court at any time before the sale commences, whether by the defaulting holder of the tenure or holding, or any one on his behalf, or any one interested in the protection of the tenure or holding, as the case may be, such sale shall not take place.

(d) The tenure or holding or part thereof shall be sold to the highest bidder in open Court.

(e) The party who shall be declared to be the purchaser shall be required to deposit immediately, in cash or Government currency notes, twenty five per centum of the amount of his bid: and in default of such deposit, the tenure or holding or part thereof, as the case may be, shall be put up again and sold forthwith, or on the next ensuing office day:

Provided that if the purchaser be the decree holder, he shall be entitled to set off of his decretal amount against the amount of his bid.

(f) The full amount of the purchase-money shall be made good by the purchaser before the sunset of the eighth days from that on which the sale took place, reckoning that day as one of the eight days :

or, if the eighth day be a Sunday or other closed holiday then on the first office day after the eighth day; and in default of payment within the prescribed period as aforesaid the deposit shall be forfeited to the Government, and the tenure or holding or part thereof, as the case may be, shall be resold, and the defaulting purchaser shall forfeit all claims thereto or to any part of the sum for which the tenure or holding or part thereof as the case may be subsequently sold:

Provided that if the proceeds of the sale which may be eventually completed be less than the price bid by the defaulting purchaser, the difference shall be leviable from him under the law for enforcing the payment of money in satisfaction of a money decree for arrears of rent.

(g) The provisions with regard to sales shall also be applicable to all re-sales under this section which may be rendered necessary by the default of any purchaser.

208C. Certificate And Possession To Be Given To Purchaser On Payment In Full :-

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When the purchase-money shall have been paid in full the officer holding the sale shall give the purchaser a certificate in the prescribed form containing the necessary particulars of the property sold; and shall further on the purchaser making application and depositing the requisite costs to be determined by him, depute an officer or Amin to put him in possession of the property in customary manner.

208D. Purchaser To Acquire The Tenure Or Holding With Certain Exception Free Of Incumbrances :-

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Subject to the first proviso to sub-section

(1) of section 208, the purchaser of a tenure or holding or portion thereof, as the case may be, shall acquire it free of all incumbrances which may have accrued thereon by any of the holder or his representatives-in-interest, unless the right of making such incumbrances shall have been expressly vested in the holder by the written engagement, if any, under which the tenure or holding was created or by the subsequent written authority of the person who created it or his representative in-Interest:

Provided that nothing herein contained shall be held to entitle the purchaser to eject khudkaph raiyats or resident and hereditary cultivators, nor to cancel bonafide engagements made with such class of raiyats or cultivators aforesaid by the late incumbent of the under-tenure or his representative in charge except it be proved, in a regular suit to be brought by such purchaser for the adjustment of his rent, that a higher rent would have been demandable at the time such engagements were contracted by his predecessor.

Nothing in this section shall be held to apply to the purchase of a tenure by the previous holder thereof, through whose default the tenure was brought to sale.]

209. Disposal Of Proceeds Of Sale Under Section 208 :-

(1) In disposing of the proceeds of the sale of a tenure or holding under section 208, the following procedure shall be observed that is to say --

(a) there shall be paid to the decree holder the costs incurred by him in bringing the tenure or holding to sale;

(b) there shall, in the next place, be paid to the decree holder the amount due to him under the decree in execution of which the sale was made;

(c) if there remains a balance after those sums have been paid, there shall be paid to the decree holder therefrom any rent which may have accrued due to him in respect of the tenure or holding between the institution of the suit and the date of the sale; and

(d) the balance (if any) remaining after the payment of rent referred to in clause (c) shall upon the expiration of two months from the date of the sale, be paid to the judgment-debtor upon his application:

Provided that where a tenure or holding has been sold in execution of a decree obtained by one or more co-sharer landlords in a suit

instituted under clause-(b) of section 142-

(i) payment of the amount due under such decree shall, notwithstanding anything contained in clause (b) of this section be made to the decree holder and to the other co-sharer landlords in proportion to the amount found to be due to each, and

(ii) if there remains balance, payment of any rent which may have accrued due in respect of the tenure or holding between the institution of the suit and the date of the sale shall, notwithstanding anything contained in clause (c), but subject to the determination in the manner and with effect mentioned in sub-section (2) of any dispute as to their respective rights to receive such rent, be made to the said decree holder and other co- sharer landlords in proportion to their respective shares in the tenure or holding.

(2) If the Judgment-debtor disputes the decree-holders right to receive any sum on account of rent under clause (c) the Deputy Commissioner shall determine the dispute and the determination shall have the force of decree.

210. Sale Of Other Property In Execution Of Decree For Arrears Of Rent Of Tenure Or Holding :-

(1) If, after sale of a tenure or holding in pursuance of section 208, any portion of the decree amount remains due 1[or if the tenure or holding or portion thereof cannot be sold under that section by reason of the decree not being a decree for an arrear of rent] process may be applied for against any other property, movable or immovable, belonging to the judgment- debtor:

1[Provided that nothing in this section shall be deemed to authorise the arrest or detention in the civil prison of the judgment- debtor.]

(2) Notwithstanding any thing contained in sub-section (1) 2[when the Deputy Commissioner passes a decree for an arrear of rent due in respect of tenure the decree-holder may], with the permission of the Deputy Commissioner, granted for reasons to be recorded in writing proceed against any other property, movable or immovable of the judgment-debtor, without first making application for the sale of the tenure 3[* * *] in respect of which the arrear has accrued.

(3) Property referred to in sub-section (1) and (2) may be brought to sale --

(a) if movable, in the manner provided in sections 199 to 205, and 4[(b) if immovable, in the manner provided by Order XXI rules 11

(3), 13, 14, 54(with which shall be read section 64 of the said Code), 55, 58, to 73 inclusive, 83 to 88 inclusive and 91 to 103 inclusive of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) the words and figures rule 89 and rule 90 occurring in rule 92 being understood as section 212, sub-section (1) and section 213 sub-section (1), respectively of this Act:

Provided that where anything contained in the said provisions is inconsistent with anything contained in sections 212 to 214 inclusive, the latter shall prevail.]

5[(4) When immovable property has been brought to sale in the manner provided by sub-section (3) (b) and such sale has become absolute, the property shall be deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.]

1. Ins. by Act 25 of 1947.

2. Subs. by Act 2 of 1938.

3. Rep. by *ibid*.

4. Subs. by Act 6 of 1920.

5. Ins. by *ibid*.

211. Procedure Where Third Party Claims To Be In Lawful Possession Of Tenure Or Holding :-

(1) If, before the day fixed for the sale of any tenure or holding in pursuance of section 208 a third party appears before the Deputy Commissioner and alleges that he, and not the person against whom the decree has been obtained, was in lawful possession of, or had some interest in the tenure or holding when the decree was obtained.

The Deputy Commissioner shall examine such party according to the law for the time being in force relating to the examination of witnesses, and if he sees sufficient reason for so doing and if such party deposit in Court or gives security for the amount of the decree the Deputy Commissioner shall stay the sale and shall, after taking evidence adjudicate upon the claim :

Provided that no such adjudication shall be made if the Deputy Commissioner considers that the claim was designedly or unnecessarily delayed :

Provided also that no transfer of a tenure shall be recognized unless it has been registered in the office of the landlord or sufficient cause for non-registration is shown to the satisfaction of the Deputy Commissioner.

1[(1A) (a) If the Deputy Commissioner gives judgment in favour of such third party, the amount of the decree shall be satisfied from the deposit or security aforesaid and the Deputy Commissioner shall in his judgment set out the portion in any, of the said amount and of his costs in the proceedings which such third party is entitled to recover from each of the other persons having an interest in the tenure or holding, and such sum shall be deemed to be money (not being due or recoverable as an arrear of rent) payable under order of the Deputy Commissioner under this Act.

(b) If the Deputy Commissioner gives judgment against such third party, the sale shall proceed, and such third party shall upon payment of the costs, if any, allowed against him, be entitled to the return of the deposit or cancellation of the security, as the case may be.]

(2) The party against whom judgment is given by the Deputy Commissioner under sub-section (1) may, at any time within one year from the date of the judgement, bring a suit in the Civil Court to establish his right 1[and, if the sale has been held to have it set aside on payment by him or the amount of the decree].

1. Ins. by Act 6 of 1920.

212. Application To Set Aside Sale Of Immovable Property On Deposit Of Debt And Compensation To Purchaser :-

(1) When any immovable property has been sold under this Chapter in execution of decree, any person who owned such property immediately before the sale, or who claims, an interest therein under a title lawfully acquired before the sale may, at any time within a period of 1[ninety] days from the date of the sale, apply to have the sale set aside on his depositing in the Court of the Deputy Commissioner, -

(a) for payment to the purchaser--a sum equal to five per centum of the purchase money, and

(b) for payment to the decree-holder-- the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamation 2[of] sale have been received by the decree holder.

Provided that, if a person applies under section 213 to set aside the sale of his immovable property, he shall not be entitled to make an application under this section.

(2) If the said deposits are made within the said period, the Court shall pass an order setting aside the sale, 3[and the purchaser shall

be entitled to an order for the payment of the aforesaid sum equal to five per centum of the purchase-money and to an order for repayment of his purchase-money, with or without interest as the Court may direct, against any person to whom it has been paid.]

1. Subs. by Act 2 of 1938.
2. Subs. by 6 of 1920.
3. Subs. by Act 6 of 1920.

213. Application To Set Aside Sale Of Immovable Property On Ground Of Irregularity Or Fraud :-

(1) When any immovable property has been owned under this Chapter in execution of a decree, the decree holder or the person who owned such property immediately before the sale may 1[at any time within a period of thirty-days from the date of the sale], apply to the Deputy Commissioner to set side the sale on the ground of a material irregularity 1[or fraud] in publishing or conducting it; but no sale shall be set aside on the ground of irregularity unless the applicant proves to the satisfaction of the Deputy Commissioner that he has sustained substantial injury by reason of such irregularity:

Provided that if a person applies under section 212 to set aside the sale of his immovable property, he shall not be entitled to make an application under this section.

(2) If an application be made under this Section, and if the objection be allowed, the Deputy Commissioner shall pass an order setting aside the sale.

1. Ins. by ibid.

213A. Sale In Execution Deemed Set Aside When Rent Decree Set Aside And Restoration Of Status Quo Ante :-

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1[(1) Where a decree for rent is set aside any sale of immovable property in execution of such decree shall be deemed to be set aside and the Court of first instance shall restore the judgment-debtor to such ownership and if he is not in possession to such possession of the immovable property as he has at the date of the sale, and shall upon the application of any person affected by the sale or the reversal thereof, pass such further orders as will so far as may be, place the parties, including the auction purchaser and his successor-in-interest if any, in the position which they would have occupied but for such decree; and for this purpose the Court may make any orders, including orders for the refund of costs for the payment of interest, damages, compensation and mesne profits which are properly consequential on such reversal.

(2) No suit shall be instituted in any Court for the purposes of obtaining any restitution or other relief which could be obtained by application under sub-section (1).

1. Ins. by Act 6 of 1920.

214. Grounds On Which Suit Or Application To Set Aside Sale May Be Brought :-

1[No suit or application shall be entertained by any Court to set aside or to modify the effect of-

(a) any sale made under this Chapter, save under section 211, section 212 or section 213 or on the ground of fraud or want of jurisdiction, or

(b) an order under section 212, sub-section (2) or section 213, sub-section (2), setting aside a sale.

Explanation. --Where property has been sold under the provisions of sub-section (3) (b) of section 210, this section does not prohibit an application under rule 72 (3) or rule 91 nor a suit under rule 63, or rule 103 of Order XXI of the First Schedule to the Code of Civil Procedure 1908, if such suit is instituted within one year of the date of the adverse order.]

1. Subs. by Act 6 of 1920.

214A. Sale Of Portion Of Holding :-

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1[If the Deputy Commissioner directs the sale of a portion of a holding, the provisions of the Chapter relating to the sale of a holding shall, as far as may be, apply to the sale of such portion.]

1. Ins. by Act 2 of 1938.

215. Appeals From Orders Of Deputy Commissioner :-

1[(1) All orders passed by a Deputy Commissioner in suits tried by him under sub-clause (c) of clause (2) or clause (7) of section 139, if the amount sued for, or the value of the property claimed does not exceed one hundred rupees, the judgment of the Deputy Commissioner shall be final and not subject to appeal, unless a question relating to a title to land, or to some interest in land, as between parties having conflicting claims thereto, has been determined by the judgment in which case the judgment shall be open to an appeal which shall lie to the Judicial Commissioner unless the amount or value in dispute exceeds five thousand rupees in which case the appeal shall lie to the High Court:

(2) When any such suit in which, if tried and decided by a Deputy Commissioner, the judgment of the Deputy Commissioner would be final as tried and decided by a Deputy Collector, an appeal from the judgment of the Deputy Collector shall lie to the Deputy Commissioner unless a question relating to a title to land, or to some interest in land as between parties having conflicting claims

thereto has been determined by the judgment, in which case the judgment shall be open to appeal to the Judicial Commissioner and to the High Court as provided for in sub-section (1).

(3) In all other suits before the Deputy Commissioner or Deputy Collector under this Act an appeal from the judgment of the Deputy Commissioner or Deputy Collector shall lie to the Judicial Commissioner, unless the amount or value in dispute exceeds five thousand rupees in which case the appeal shall lie to the High Court.

(4) All orders passed by a Deputy Commissioner or Deputy Collector in any suit relating to the trial thereof, shall be appealable to the Court to which an appeal from the decree itself would lie:

Provided that there shall be no right of appeal against order passed under section 206 or section 211, or under section 212, sub-section (2) setting aside sale or under rule 60, rule 61, or rule 62 or Order XXI of the First Schedule to the Code of Civil Procedure, 1908 (V of 1908), and against orders passed under section 213 A.

(5) All other orders under the provisions of this Act shall be appealable to the Commissioner if passed by a Deputy Commissioner and to the Deputy Commissioner or to any officer specially empowered by the 2[State] Government by notification, to hear such appeals, if passed by an officer exercising powers of Deputy Commissioner.

(6) The Deputy Commissioner may, at any time transfer any appeal already filed before him to any officer specially empowered to hear such appeals under sub-section (5) or withdraw any appeal pending before any officer so empowered and either hear such appeal himself or transfer it for disposal to any other officer so empowered.

(7) No judgment of a Deputy Commissioner in any suit and no order of Deputy Commissioner passed in any suit and relating to the trial thereof a or after decree and relating to the execution thereof, shall be open to appeal otherwise than as expressly provided for in this Act.

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1. Ins. by Act 25 of 1947.

2. Subs. by A.L.O. for "Provincial".

3. Sec 215A Ins. by Act 3 of 1940 ceased to have effect after 1st April, 1948.

216. Limitation Of Appeals Under Section 215 :-

1[(1) Every appeal under section 215 shall be presented to the Commissioner, the Deputy Commissioner or any officer specially empowered by the 2[State] Government under sub-section (5) of section 215 as the case may be, within thirty days from the date of the order or the decree appealed against.

(2) Appeals to the Judicial Commissioner or to the High Court shall be presented within the time provided for the presentation of appeals to a District Judge or the High Court as the case may be under the Code of Civil Procedure 1908 (V of 1908) by the law for the time being in force for the limitation of appeals.]

1. Subs. by Act 25 of 1947

2. Subs. by A.L.O. for "Provincial".

217. Bar To Further Appeals, With Proviso For Revision By Board Or Commissioner :-

Orders passed by the Commissioner or Deputy Commissioner in appeals referred under section 215 shall not be open to any further appeal; but the board or (in the case of appeals decided by the Deputy Commissioner) the Commissioner may call for the case and pass such orders thereon as it or he may think proper.

218. Appeal In Certain Suits :-

Rep. by the Chota Nagpur Tenancy (Amendment) Act, 1947 (Bihar Act 25 of 1947), s. 34.

219. Appeal To Deputy Commissioner When To Be Presented :-

Rep. by the Chota Nagpur Tenancy (Amendment) Act, 1947 (Bihar Act 25 of 1947), s. 34.

220. Appeal When To Be Heard :-

(1) The Deputy Commissioner or the Commissioner, as the case may be, shall fix a day for hearing the appeal, and shall cause notice of the same to be served on the respondent.

(2) If, on the day Fixed for hearing the appeal, or on any other day to which the hearing may be adjourned, the appellant does not appear in person or by agent, the appeal shall be dismissed for default.

(3) If on such day the appellant appears and the respondent does not appear in person or by agent, the appeal shall be heard

exparte.

221. Re-Admission Of Appeal :-

If an appeal is dismissed for default of prosecution, the appellant may within thirty days from the date of the dismissal, apply to the Deputy Commissioner or the Commissioner as the case may be, for the re-admission of the appeal; and, if it is proved to the satisfaction of the Deputy Commissioner or the Commissioner as the case may be, that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing the Deputy Commissioner or the Commissioner, as the case may be, may re-admit the appeal.

222. Re-Bearing Of Appeal On Application Of Respondent Against Whom Ex -Parte Decree Passed :-

When an appeal is heard ex- parte in the absence of the respondent and judgment is given against him, he may apply to the Appellate Court to re-hear the appeal; and if he satisfies the Court that notice was not duly served or that he was prevented by sufficient cause from attending when the appeal was called on for hearing, the Court may re-hear the appeal on such terms as to costs or otherwise as the Court thinks fit to impose upon him.

223. Judgment In Appeal :-

After hearing the appeal, the Deputy Commissioner or the Commissioner, as the case may be, shall give judgment in the manner provided in section 170 for giving judgment in original suits.

224. Appeal To Judicial Commissioner Or High Court :-

(1)1[xxx]

2[(2) Save where otherwise expressly provided in this Act or by any other law for the time being in force, a second appeal shall lie to the High Court from any appellate decree passed by the Judicial Commissioner under this Chapter, from any order passed by him on appeal under section 215 1[****] on any of the following grounds, namely: --

(a) the decision being contrary to law or to some usage having the force of law;

(b) the decision having failed to determine some material issue of

law or usage having the force of law;

(c) a substantial error or defect in the procedure provided by this Act which may possibly have produced error or defect in the decision of the case upon the merits.

and the provisions of Part VII and of Order XLI of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908) shall apply, so far as may be to such appeals.]

1. Repealed by Act 25 of 1947.

2. Subs. by Act 6 of 1920.

225. Hearing Of Appeals By Judicial Commissioner Instead Of By Deputy Commissioner :-

(1) Where, in analogous suits, some appeals have been presented to the Deputy Commissioner and of others to the Judicial Commissioner, the Judicial Commissioner may, on the application of any of the parties transfer to his own Court the appeals pending in the Court of the Deputy Commissioner.

(2) Where in analogous suits some appeals lie to the Deputy Commissioner and others to the Judicial Commissioner, a plaintiff or defendant whose appeal would ordinarily lie to the Deputy Commissioner may, if an appeal in any such suit has been presented by any other plaintiff or defendant to the Judicial Commissioner and admitted, present his appeal to the Judicial Commissioner instead of to the Deputy Commissioner and the Judicial Commissioner may hear and decide the same.

226. Limitation Of Appeal To Judicial Commissioner Or High Court :-

Rep. by s. 36 of the C.N.T. (Amendment) Act, 1947 (Bihar Act 25 of 1947).

227. Power To Set Aside Judgment Or Order Passed Ex Parte By Default :-

(1) No appeal by a plaintiff or defendant shall lie from a judgment or order passed against him by default for non-appearance, whether such judgment or order were given under section 155, section 156, section 157 or section 169.

(2) If the party against whom any such judgment or order has been given appears, either in person or by agent: --

(a) if a plaintiff, within thirty days from the date of the Deputy

Commissioners order, and

(b) if a defendant, within thirty days after any process for enforcing the judgment has been executed.

or at any earlier period, and shows sufficient cause for his previous non-appearance and satisfies the Deputy Commissioner that there has been a failure of justice, the Deputy Commissioner may, upon such terms and conditions as to costs or otherwise as he may think proper, revive the suit and set aside the judgment or order.

(3) No judgment or order shall be altered or set aside under subsection (2) without previously summoning the party to appear and be heard in support of it.

228. Order To Set Aside Judgment Final, But Rejection Of Application To Set Aside Appealable :-

In all cases in which the Deputy Commissioner under section 227, passes an order setting aside a judgment or order, the order shall be final but in all appealable cases in which the Deputy Commissioner, under that section rejects an application for setting aside a judgment or order an appeal shall lie from the order of rejection to the tribunal to which the final decision in the suit would be appealable, provided that the appeal be preferred within the time allowed for an appeal from such final decision

229. Application Of Rule 22 Of Order Xli Of The First Schedule To The Code Of Civil Procedure :-

The provisions of 1[Rule 22 of Order XLI of the First Schedule to the Code of Civil Procedure, 1908 [5 of 1908] shall, so far as applicable, apply to all appeals under this Act from decisions of the Deputy Commissioner 2[or of a Revenue-officer].

1. Subs. by Act 6 of 1920.

2. Subs. by A.L.O. for "Provincial".

Chapter : XVIA - Summary Procedure for the Recovery of Rents under The Bihar and Orissa Public Demands Recovery Act, 1914

229A. Recovery Of Arrears Of Rent Under The Certificate Procedure In Certain Cases :-

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(1) Any landlord (other than the Government) whose land is situate in an area for

which a record-of-right has been prepared and finally published, and in which such record is maintained, may apply to the 2[State] Government, through the Deputy Commissioner of the district in which his land is situate, for the application of the procedure prescribed by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. & O. Act 4 of 1914) to the recovery of arrears of rent which he alleges are or, may become, due to him for lands in such area.

(2) The 2[State] Government may reject any such application or may allow it subject to such terms and conditions as it may see fit to impose, and may at any time add to or vary any terms or conditions so imposed or withdraw its allowance of the application, without, in any of these cases, assigning any reason for its action.

(3) When any such application has been allowed the landlord may make a requisition in writing in the form prescribed to the Certificate officer for the recovery of any arrears of rent which he alleges are due to him from any tenant.

(4) Every such requisition shall be signed and verified by the landlord making it in the manner prescribed by rule I in Schedule II to the Bihar and Orissa Public Demands Recovery Act, 1914 (B & O. Act 4 of 1914) as amended for the time being by rules made under section 39 thereof, and shall be chargeable with a fee of the amount which would be payable under the Court-fees Act, 1870 (7 of 1870) in respect of a plaint for the recovery of a sum of money equal to that stated in the requisition as being due.

(5) On receipt of any such requisition, the Certificate-Officer may, in accordance with such rules as the 2[State] Government may prescribe in this behalf, and if he is satisfied that the arrear is due, sign a certificate in the prescribed form stating that the arrear is due, and shall include in the certificate the fee paid under sub-section (4) and shall cause the certificate to be filed in his office:

Provided that-

(a) no certificate shall be signed for the recovery of arrears of rent of a tenancy regarding which a suit has been instituted in the Court of the Deputy Commissioner for the alteration of the rent payable by the tenant, or the determination of his status as a tenant, in respect of the period during which it is alleged in the requisition made under sub-section (3) that the arrears of rent sought to be recovered have accrued, and

(b) if, after the signing of a certificate, it is found that such a suit was instituted in the Court of the Deputy Commissioner before the certificate was signed, such certificate shall be cancelled.

(6) The person in whose favour any certificate is signed under sub-section (5) shall be deemed to be the certificate bidder for the amount mentioned in the certificate and the person against whom the certificate is signed shall be deemed to be the certificate-debtor for the said amount; and all proceedings taken by the Certificate-officer for the recovery of such amount shall be taken at the instance of the first mentioned person, and at his cost and responsibility and not otherwise.

(7) The Bihar and Orissa Public Demands Recovery Act, 1914 (B. & O Act 4 of 1914) with such restriction and modifications (if any) as may be prescribed, shall apply to the execution, and to all proceedings arising out of the execution, of certificates filed under sub-section (5).

(8) No landlord shall during the pendency of any proceeding under this section institute a suit for the recovery of any arrears of rent in respect of which he has made a requisition under sub- section (3): and, subject to the provisions of section 43 of the Bihar and Orissa Public Demands Recovery Act, 1914 (B. & O. Act 4 of 1914), no tenant shall, after the signing of any certificate against him under sub-section (5) of this section, institute a suit before, or make an application to the Deputy Commissioner for the alteration of the rent payable by him, or the determination of his status as a tenant, in respect of the period during which the arrears of rent for which such certificate was signed, have accrued.

(9) The word "landlord" in this section includes an entire body of landlords, and also one or more co-sharer landlords who collects his or their share or shares of the rent separately and where the Certificate-officer signs a certificate on the requisition of one or more such co-sharer landlords, he shall at the same time issue

to each of the remaining co-sharer landlords a copy of such certificate.

(10) Nothing in this section shall apply to a Mundari Khunt-kattidari tenancy notwithstanding that it constitutes, or is situate in an area described in sub-section (1).]

1. Subs. by Act 6 of 1920.

2. Subs. by A.L.O. for "Provincial".

230. Application Of The Indian Limitation Act, 1908 :-

The provisions of the Indian Limitation Act 1908 (9 of 1908) shall, so far as they are not inconsistent with this Act, apply to all suits, appeals and application under this Act.

230A. Special Rule Of Limitation In Certain Applications And Suits Before A Revenue-Officer :-

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1[Notwithstanding any of the provisions of the Indian Limitation Act, 1908 (9 of 1908) where an application under sub-section (3) of section 85 has been made or a suit under section 87, section 111 (8), section 130 or section 252 has been instituted within three months from the date of final publication of the record-of-rights and any person is thereafter added or substituted as a party to such application or suit, the application or the suit shall, as regards such person, be deemed for the purpose of limitation to have been made or instituted on the date upon which it was made or instituted by the original applicant or plaintiff against the original defendant.

1. Ins. by Act 6 of 1920.

231. General Rule Of Limitation :-

All suits and applications instituted or made under this Act, for which no period of limitation is provided elsewhere in this Act, shall be commenced and made respectively within one year from the date of the accruing of the cause of action.

Provided that there shall be no period of limitation for applications under sections 28, 31 1[clauses (c) to (f) of section 33A] 34, 50, 61, 75, 105 or 121].

1. Ins. by Act 2 of 1938.

232. Limitation Of Suits And Applications For Grant Of Lease Etc. :-

Suits and applications for the delivery of leases or counterpart engagements or for the determination of the rates or rent payable for lands held by a tenant, may be instituted and made, respectively at any time during the tenancy.

233. Limitation Of Certain Suits For Ejectment :-

Suits for the ejectment of an occupancy raiyat or non-occupancy-raiyat on any of the grounds mentioned in section 22 or in clauses (b) and (a) of section 41 shall be instituted within two years from the date of the misuse or breach complained of.

234. Limitation Of Suits And Applications For Arrears Of Rent :-

Suits and applications under section 244, for the recovery of arrears of rent, shall be instituted within three years]1 or where the State Government is the landlord, within ten years from the end of the agricultural year in which the arrear became due.

1. Ins. by S.7 of the Chota Nagpur Tenancy (Amdt.) Act, 1955 (Bihar Act 20 of 1955). This amendment shall cease to have effect after 31st March 1975 and section 8 of the Bihar and Orissa General Clauses Act, 1917 (B. & O. Act. 1 of 1917) shall apply on the expiry of this amendment, under section 3 of the Bihar Tenancy Laws (Amdt.) Act, 1970 (Bihar Act 5 of 1970).

235. Successive Suits Or Applications For Recovery Of Rent :-

(1) Where a landlord has instituted a suit against a tenant or applied for a certificate under section 240 against a Mundari Khunt-kattidar for the recovery of any rent of tenancy, the landlord shall not institute another suit or apply for another such certificate against him for the recovery of any rent of that tenancy until after six months from the date of the institution or making of the previous suit or application.

(2) Nothing in sub-section (1) shall prohibit a fresh suit for rent when a former suit has been withdrawn with leave to sue again or when a claim has been rejected under section 154, or when a case has been struck off under section 155 or section 169.

236. Limitation Of Suits Against Agents For Money, Accounts Or Papers :-

Suits for the recovery of money in the hands of an agent or for the delivery of accounts or papers by an agent, may be brought at any time during the agency, or within one year after the determination of the agency, of such agent:

Provided that, if the person having the right to sue has by fraud, been kept from knowledge of the receipt of any such money by the

agent, or if any fraudulent accounts has been rendered by the agent the suit may be brought within one year from the time when the fraud first became known to such person; but not such suit shall in any case be brought at any time exceeding three years from the termination of the agency.

237. Limitation Of Application For Recovery Of Possession Of Holding :-

Applications for the recovery of possession of a holding, or any portion thereof from which an occupancy-raiyat has been unlawfully ejected must be instituted within three years from the date of such ejection.

238. Limitation Of Suits Or Applications By Village Headmen For Recovery Of Possession :-

Suits or applications for recovery of possession of his office or agricultural land by a 1[village headman] against a landlord or any person holding by virtue of any assignment from a landlord, must be instituted or made within three years from the date of dispossession.

1 Subs. by Act 6 of 1920.

CHAPTER 17

Special provisions with respect to Mundari Khunt-kattidars

239. Application Of Preceding Sections To Mundari Khunt-Kattidari Tenancies :-

Such of proceeding sections as are applicable to Mundari Khunt-kattidars shall in their application to such persons and their tenancies, be read subject to the provisions of the following section in this Chapter.

240. Restrictions On Transfer Of Mundari Khunt-Kattidari Tenancies :-

(1) No Mundari Khunt-kattidari tenancy or portion thereof shall be transferable by sale, whether in execution of decree or order of a Court or otherwise:

Provided that, when a decree or order has been made by any court for the sale of any such tenancy or portion thereof, in satisfaction of a debt due under a mortgage (other than a usufructuary mortgage) which was registered before the commencement of the Chota

Nagpur Tenancy (Amendment) Act, 1903 (Hen. Act 5 of 1903)1, the sale may be made with the previous sanction of the Deputy Commissioner.

(2) If the Deputy Commissioner refuses to sanction the sale of any such tenancy or portion thereof under the proviso to sub-section (1), he shall attach the land and make such arrangements as he may consider suitable for liquidating the debt.

(3) No mortgage of Mundari-Khunt-kattidari tenancy or any portion thereof shall be valid, except a bhugut bandha mortgage for a period, expressed or implied, which does not exceed or cannot in any possible event exceed seven years:

2[Provided, that a Mundari-Khunt-kattidar tenant may transfer by simple mortgage his right in his tenancy or any portion thereof with a view to raising loan for agricultural purpose to a society or bank registered or deemed to be registered under the Bihar and Orissa Co-operative Societies Act, 1935 (Bihar and Orissa Act VI of 1935) or a Company or Corporation owned by or in which not less than fifty one percent of the share capital is held by the State Government or the Central Government or partly by the State Government and partly by the Central Government and which has been set up with a view to providing agricultural credit to cultivators.]

(4) No lease of a Mundari Khunt-kattidari tenancy or any portion thereof shall be valid, except a lease of one or other of the following kinds namely:--

(a) mukarrari leases of uncultivated land, when granted to Mundari or a group of Mundaris for the purposes of enabling the lessees or the male members of their families to bring suitable portions of the land under cultivation.

(b) leases of uncultivated land, when granted to a Mundari cultivator to enable him to cultivate the land as a raiyat.

Explanation.--The expression "uncultivated land" as used in this sub-section, includes land which, though formerly cultivated, is not, at the time the lease is granted, either under cultivation or in the occupation of the lessee for purposes of cultivation.

(5) Where a Mundari Khunt-Khunt-kattidari tenancy is held by a group of Mundari-khunt-kattidars; no bhugut bandha mortgage or mukarrari lease of the tenancy or any portion thereof shall be valid, unless it is made with the consent of all the Mundari-khunt-kattidars.

(6) No transfer at Mundari-khunt-kattidari tenancy or any portion thereof, by any contract or agreement made otherwise than as

provided in the foregoing sub-sections shall be valid; and no such contract or agreement shall be registered.

(7) Nothing in the foregoing sub-section shall affect any sale or, except as declared in the proviso to sub-section (1) any mortgage, or any lease, made before the commencement of the Chota Nagpur (Amendment) Act, 1903 (Ben. Act 5 of 1903)

1. Rep. by Act 6 of 1920.

2. Ins. by Act 45 of 1982.

241. Transfer For Certain Purposes :-

(1) Notwithstanding anything contained in section 240, a Mundari-khunt-kattidar may without the consent of his landlord, transfer the land comprised in his tenancy, or any part thereof, for any reasonable and sufficient purpose having relation to the good of the tenancy or of the tenure or estate in which it is comprised, such as the use of the land for any charitable, religious or educational purpose or for the purposes of manufacturer or irrigation, or as building ground for any such purpose, or for access to land used or required for any such purpose:

Provided that the transfer shall be made by registered deed and that before the deed is registered and land transferred, the written consent of the Deputy Commissioner shall be obtained to the terms of the deed, of the transfer.

(2) Before consenting to any such transfer, the Deputy Commissioner shall satisfy himself that 1[adequate compensation is tendered to] the landlord and other co-sharers in the tenancy 2[* * *] for the loss (if any) caused to them by the transfer : and where only part of the land comprised in the tenancy is transferred may, if he thinks fit, apportion between the transferee and the original tenant all dues payable for the tenancy.

(3) An Appeal against any order of a Deputy Commissioner consenting or refusing to consent to any such transfer shall lie as provided in Chapter XVI.

1. Ins. by Act 6 of 1920.

2. Omitted by ibid.

242. Ejectment Of Persons Unlawfully Obtaining Possession Of Such Tenancies :-

If any person obtains possession of a Mundari-khunt-kattidari tenancy or any portion thereof in contravention of the provision of section 240 the Deputy Commisioner may eject him thereform.

and if the tenancy was, before such possession was obtained entered as a Mundari-khunt-kattidari tenancy in a record-of-rights finally published under this Act or under any law in force before the commencement of this Act, no suit shall be maintainable in any Court in respect of such ejectment; but an appeal shall lie as provided in Chapter XVI.

243. Enhancement Of Rent :-

(1) The rent of a Mundari-khunt-kattidari tenancy may be enhanced only --

(a) by an order of the Deputy Commissioner, and

(b) if it be shown before the Deputy Commissioner that the tenancy was created within a period of twenty years immediately preceding the presentation of the petition for enhancement.

(2) An order of the Deputy Commissioner under sub-section (1) shall not enhance the rent of any such tenancy to an amount which would exceed one-half of the rent which would be payable for the land if it were held by a raiyat having a right of occupancy therein.

(3) The provisions of sections 28 to 30 shall be applicable to proceedings or the enhancement of the rent of a Mundari-khunt-kattidari tenancy.

244. Recovery Of Arrears Of Rent Under The Certificate Procedure Where There Is A Record Of Rights :-

1[(1) When an arrear of rent accrues in respect of a Mundari-khunt-kattidari tenancy for which a record-of-rights has been prepared under this Act or under any law in force before the commencement of this Act, no suit shall be maintainable in any Court for the recovery of the arrears but the landlord may apply in writing to the Deputy Commissioner to sign a certificate authorizing the recovery thereof, with simple interest not exceeding twelve and a half or in the case of money recoverable under the Cess Act, 1880 (Ben. Act 9 of 1880) at twelve-and-a-half per centum per annum under the Bihar and Orissa Public Demands Recovery Act, 1914 (B. & O. Act 4 of 1914).

(2) Every such application shall be signed and verified by the landlord making it, in the manner prescribed by rule 1 in Schedule II to the said Act, as amended for the time being by rules made under section 47 thereof, and shall be chargeable with a fee of the amount which would be payable under Court-Fees Act, 1870 (7 of 1870) in respect of a plaint for the recovery of a sum of money

equal to that stated in the application as being due.

(3) Upon receiving any such application the Deputy Commissioner may, after making such inquiry and taking such evidence as he may consider necessary, and if he is satisfied that the arrear is due, sign a certificate, in the prescribed form, stating that the arrear is due; and shall include in the certificate the fee paid under sub-section (2) and shall cause the certificate to be filed in his office.

(4) The person in whose favour any such certificate is signed shall be deemed to be the certificate-holder for the amount mentioned in the certificate and the person against whom the certificate is signed shall be deemed to be the certificate-debtor for the said amount and all proceedings taken by the Certificate-officer for the recovery of such shall be taken at the instance of the first mentioned person, and at his cost and on his responsibility, and not otherwise.

(5) The Bihar and Orissa Public Demands Recovery Act, 1914 (B. & O. Act 4 of 1914) and sections 181 to 207 of this Act, with such restriction and modifications (if any) as may be prescribed, shall apply to the execution, and to all proceedings arising out of the execution of certificate filed under sub-section (3):

Provided as follows: --

(a) subject to the provision of section 248, a certificate signed under this section may be enforced only by the attachment and sale of the movable property of the person against whom the certificate is made, or by the attachment realisation of rent or other debts due to him, or by execution, against his person in the manner provided by Chapter XVI, or by any two or more of these processes; and

(b) no objection, by any third person to the attachment or sale of crops shall be entertained, except--

(i) an objection, by a mortgagee holding under a bhugut bandha mortgage, that the judgment-debtor has other movable property or assets, from which the sum due can be realized; or

(ii) an objection, by a lessee holding under a mukarrari lease described in section 240, clause (a), that the land in respect of which the arrear accrued is included in his lease, and that the judgment debtor has other movable property or assets from which the sum due can be realized; or

(iii) an objection, by a cultivator, that he is in possession of the land in respect of which the arrear accrued, that the land is recorded in the record-of-rights as being in the possession of himself or of some person from whom he has lawfully acquired such possession, and that the judgment-debtor has other movable

property or assets from which the sum due can be realized; or
(iv) an objection, by such third person, that the land on which such crops were or are standing is entered in the record-of-rights as being in the possession of himself or of some person from whom he has lawfully acquired possession, and that such land does not form part of the tenancy in respect of which the certificate was signed.

(6) Notwithstanding anything hereinbefore contained, the Deputy Commissioner may, in any case by written order setting forth the reasons therefor, refuse to sign a certificate as aforesaid, or stay for any specified period the execution of any certificate which has been signed.

(7) An appeal from any order made under sub-section (6) shall lie as provided in Chapter XVI.]

1. Subs by Act 4 of 1914.

245. Reference Of Question Of Title To Civil Court :-

If, in the course of any proceedings under section 244, any question of title raised which could in the opinion of the Deputy Commissioner more properly be determined by a Civil Court, the Deputy Commissioner shall refer such question to the principal Civil Court in the district for determination.

246. Recovery Of Arrear Of Rent By Suit Where There Is No Record-Of-Rights :-

(1) When an arrear of rent accrues in respect of a Mundari-khunt-kattidari tenancy for which no record-of-rights has been prepared the landlord may institute a suit for the recovery of the arrear.

(2) Subject to the provision of section 248, a decree or order made in any such suit may be enforced only by the attachment and sale of the movable property of the defendant, or by the attachment or realization of rent or other debt due to him or by execution against his person in the manner provided by Chapter XVI, or any two or more of these processes.

247. Joinder Of Parties In Proceedings Under Section 244 Or 246 :-

Where a Mundari-khunt-kattidari tenancy is held jointly by a group of khunt-kattidars,
and an objection to the making of a certificate under section 244 or to the execution thereof, or to the maintenance of a suit under

section 246, is made on the ground that all the khunt-kattidars have not been made parties to the proceeding, the objection shall not be entertained if it be shown that other khunt- kattidar could not be made parties without undue delay or expense.

248. Recovery Of Money Due To The Government Or Rent Due To A Landlord :-

Where a decree or a certificate under 1[the Bihar and Orissa Public Demands Recovery Act, 1914 (B. & O. Act 4 of 1914) has been made against a Mundari-khunt-kattidar for any money due to the 2[Government] or for rent due to a landlord, the Deputy Commissioner may attach the land occupied by him, 3[whether it be in his immediate occupation or in possession of a mortgagee or of any other person except a raiyat or a lessee holding under a mukarrari lease as described in section 240, clause (4) (a)] and make such arrangements as the Deputy Commissioner may consider suitable for liquidating the debt 3[and in particular he may realize and devote to such liquidation all rents due to such mortgage or other person shall not recover from a person rents so realized.]

1. Ins. by Act 4 of 1914.
2. Subs. by A.L.O. for "Provincial".
3. Ins by Act 6 of 1920.

249. Recovery Of Contributions From Co-Sharer Tenants :-

When a Mundari-khunt-kattidar has paid the rent of his tenancy, including portions thereof due from his co-sharers or any of them the said portions may, if the proportions due by such co-sharers are definitely stated in a record-of-rights prepared under this Act or under any law in force before the commencement of this Act, be recovered by him, with interest, under procedure provided by section 244, as if they were an arrear of rent due to a landlord.

250. Entry Of Mundari-Khunt-Kattidari Tenancies In Record Of Rights :-

All Mundari-khunt-kattidari tenancies shall be so described in any record-of- rights prepared under Chapter XII.

251. Bar To Suits Under Section 87 :-

No suit shall be entertained under section 87 for the decision of any dispute regarding any entry relating to a Mundari-Khunt-Kattidari tenancy in a record-of rights.

252. Decisions Of Disputes Regarding Entries Or Omissions In Record-Of- Rights :-

(1) At any time within three months from the date of the certificate of the final publication of the record of rights under this Act, or under any law in force before the commencement of this Act, a suit may be instituted before a Revenue-officer, for the decision of any dispute regarding any entry of a Mundari-khunt-kattidar tenancy or the incidents thereof in the record, or regarding any omission to enter such a tenancy or any incident thereof in the record; and the Revenue-officer shall hear and decide the dispute.

(2) In all such suits the Revenue-officer shall, subject to any rules made in this behalf under section 264, adopt the procedure laid down in Chapter XVI for the trial of suits before the Deputy Commissioner.

253. Appeal Against Such Decisions :-

An appeal shall lie in the prescribed manner and to the prescribed officer, from any decision of a Revenue officer under section 252.

254. Entry Of Decision In Record-Of-Rights :-

Whenever a suit instituted under section 252 has been finally decided, a note of the decision shall be made in the record-of-rights, as finally published, by the Revenue-officer referred to in that section; and such note shall be considered as part of the record.

255. In Preparing Record-Of-Rights, Judgments, Etc., In Suits Not To Be Taken As Evidence That Tenancies Are Not Mundari-Khunt-Kattidari Tenancies :-

When an order has been issued under section 80 of this Act, or under section 101 of the Bengal Tenancy Act, 1885 (8 of 1885) in respect of any local area, estate, tenure or part thereof, no judgment, decree or order in any suit instituted thereafter shall be taken as evidence,

in any inquiry made by a Revenue-officer engaged in the preparation of a record-of-rights for such area, estate, tenure or

part, under Chapter XII of this Act or under Chapter X of the said Bengal Tenancy Act, 1885 (8 of 1885),
respecting any claim that any tenancy within that area, estate, tenure or part is or is not a Mundari khunt-kattidari tenancy.

256. Record-Of-Rights To Be Conclusive Evidence On The Question Whether A Tenancy Is A Mundari-Khunt-Kattidari Tenancy :-

1[(1) Whether a record-of-rights has been finally published under section 83 of this Act or under sub-section (2) of section 103 A of the Bengal Tenancy Act, 1885 (8 of 1885) or amended under section 254 of this Act.

the entries therein relating to Mundari-khunt-kattidari tenancies shall be conclusive evidence of the nature and incidents of such tenancies and of all particulars recorded in such entries,
and, if any tenancy in the area, estate or tenure for which the record-of-rights was prepared has not been recorded therein as a Mundari- khunt-kattidari tenancy, no evidence shall be received in any Court to show that such tenancy is a Mundari-khunt-kattidari tenancy.

(2) Where in the record-of-rights finally published under sub-section (2) of section 103A of the Bengal Tenancy Act, 1885 (8 of 1885) for a village in the Estate of Porahat in the district of Singhbhum a tenant of the village has been recorded as a Mundari-khunt-kattidar, all land which he held at the date of final publication, shall be deemed to have been recorded in the record-of-rights as his Mundari-khunt-kattidari tenancy.]

1. Ins. by Act 6 of 1920.

CHAPTER 18

Chapter : XVIII

CHAPTER 19

Supplemental Provisions

257. Joint Landlords :-

When two or more persons are joint landlords anything which a landlord is under this Act, required or authorized to do must be done by both or all those persons acting together, or by an agent authorised to act on behalf of both or all of them.

258. Bar To Suits In Certain Cases :-

1[Save as expressly provided in this Act, no suit shall be entertained in any Court to vary, modify or set aside, either directly or indirectly, and 2[decision], order or decree of any Deputy Commissioner or Revenue-officer in any suit, application or proceeding under section 20, section 32, section 35, section 42, section 46, sub-section (4) section 49, section 50, section 54, section 61, section 63, section 65, section 73, section 74A, section 75, section 85, section 86, section 87, section 89, 3[* * *] or section 91 (proviso), or under Chapter XIII, XIV, XV, XVI, or XVII, except on the ground of fraud or want of jurisdiction 2[and every such decision, order or decree shall have the force and effect of a decree of a Civil Court in a suit between the parties and, subject to the provisions of this Act, relating to appeal, shall be final].

1. Added by Act 6 of 1920.

2. Ins. by *ibid*.

3. Omitted by *ibid*

259. Mode Of Service :-

Every notice, summons or other process under this Act required to be served on any person shall be served in the prescribed manner.

260. Authentication And Payment Of Costs :-

Every process issued by a Deputy Commissioner or Revenue-officer under this Act shall bear his seal and signature, and the cost of serving the same shall be paid by such person and in such manner as may be prescribed.

261. Costs In Suits And Applications :-

1[The provisions of section 35 of the Code of Civil Procedure, 1908 (5 of 1908) and of sub-rules (2) and (3) of rule 6 of Order XX of the First Schedule to the said Code shall apply to all suits, applications and proceedings under this Act.]

1. Subs. by Act 6 of 1920.

262. Deposit Of Cost Of Proceedings To Be Incurred By The Government :-

(1) A Revenue-officer or Deputy Commissioner may, subject to any directions given by the 1[State] Government, require any plaintiff or applicant to deposit in advance the whole or any part of the estimated amount of the expenses to be incurred by the

Government in any proceedings under this Act.

(2) If the amount so deposited by any person exceeds the sum finally made payable by him as costs, the excess shall be refunded to him when the proceedings are completed.

1. Subs. by A.L.O. for "Provincial".

263. Production Of Witnesses And Documents :-

For the purposes of any inquiry under this Act, any Deputy Commissioner or Revenue officer shall have power to summon and enforce the attendance of witnesses and compel the production of documents in the same manner as is provided in the case of a Court by the Code of Civil Procedure 1908 (5 of 1908).

264. Power To Make Rules To Carry Out Objects Of Act :-

(1) The 1[State] Government may make rules]2 to carry out the objects of this Act.

(2) In particular, and without prejudice to the generality of sub-section (1), the 1[State] Government may make rules -

3[(i) to prescribe the particulars to be contained in the notice, and the period within which the landlord may make the application under sub-section (1) of section 13;

(ia) to prescribe the particulars to be specified in pursuance of clause (a) of sub-section (1) of section 28, in applications for enhancement of the rent of occupancy holdings];

(ii) to limit the enhancement of the rent of occupancy holdings under section 29;

(iii) to prescribe particulars to be specified, in pursuance of clause (i) of section 31, in applications for increase of rent in respect of increase in the area of land held by occupancy-raiyat;

(iv) to prescribe particulars to be specified, in pursuance of clause (h) of section 34, application for the reduction of rent paid by occupancy-raiyats;

4(iva) to prescribe the particulars of remittances to be entered in the register to be maintained under sub-section (2) of section 53 and the manner in which the deposit shall be paid to the payer or the payee.

(v) to prescribe the manner in which the possession of land should be given under section 46, sub-section (4), section 50, sub-section (2), section 71 or section 73, sub-section (3);

(vi) to prescribe the manner in which landlords shall send notices to the Deputy Commissioner under section 73, sub-section (2);

- (vii) prescribe the manner in which rents shall be settled under section 85;
- (viii) to prescribe the officer to whom and the manner in which appeals shall lie from orders or decisions passed by Revenue-officer under section 61, section 85, section 87, section 89 Chapter XIII, Chapter XIV, Chapter XV or section 252;
- (ix) to regulate the transfer of cases to Civil Courts under the first proviso to section 87 5[and the proviso to section 139;
- (x) to prescribe the manner in which record-of-rights shall be revised in pursuance of direction given under section 98;]
- (xi) to declare the restrictions or modifications (if any) subject to which the provisions of Chapter XII shall apply to the revision of record Of-rights or the settlement of rents in pursuance of a direction given under section 98;
- (xii) to prescribe particulars to be contained in a record prepared under section 1.06;
- (xiii) to prescribe the form of statements to be prepared under section 111, clause (1);
- (xiv) to prescribe the manner in which copies of entries in records prepared under Chapter XV shall be served under section 129;
- (xv) to regulate the exercise of the right conferred by section 140 to bring collective suits or make collective applications;
- (xvi) to prescribe the Court by which decrees or orders passed by a Deputy Commissioner under this Act may be executed;
- (xvii) to prescribe the form of applications for the execution of decrees or orders passed by a Deputy Commissioner under this Act;
- (xviii) to prescribe the manner of executing decree or orders referred in section 195;
- (xix) to prescribe the manner of dealing with sale-proceeds under section 205, sub-section (2);
- (xx) to prescribe the manner of service of notices, summonses and other processes, and of publication of notices, issued under this Act;
- (xxi) to declare by what person and in which manner the cost of serving processes issued by a Deputy Commissioner or Revenue-officer under this Act shall be paid;
- (xxii) to regulate the procedure to be followed by Revenue-officers in the discharge of any duty imposed upon them by or under this Act, -and may, by such rules confer upon any such officer --
 - (a) and power exercised by a Civil Court in the trial of suits;
 - (b) power to enter upon any land, and to survey, demarcate and make a map of the same, and any power exercisable by any officer

under the Bengal Survey Act, 1875 (Ben. Act 5 of 1875); and
 (c) power to cut and thresh the crops on any land and weigh the produce, with a view to estimating the capabilities of the soil,
 6(xxiii) to prescribe the forms to be used under this Act;
 (xxiv) to prescribe the procedure to be followed and the information to be given by any party or applicant in any proceeding under this. Act;
 7[(xxv) to prescribe any other matter by this Act required, or expressly or impliedly authorized, to be prescribed.]

1. Subs. by A.L.O. for "Provincial".
2. For a list of rules made under this section and references to publications in which they have been published, see B. & O.R. & O. Vol-I Pt. IV.
3. Subs. by Act 25 of 1947.
4. Ins. by *ibid*.
5. Ins. by Act 5 of 1923.
6. For a list of rules regarding rent receipts under s. 54 ante, see B. & O. Vol. I, Pt, VI. For a list of rules prescribing forms for remitting rent by postal money order, see *ibid*.
7. Ins. by Act 6 of 1920.

265. Power To Make Rules As To Procedure, On Application Of The Code Of Civil Procedure :-

(1) The 1[State] Government may 2[***] make rule]3 for regulating the procedure of the Deputy Commissioner in matters under this Act for which a procedure is not provided hereby, and may, by any such rule, direct that any provisions of the Code of Civil Procedure, 1908 [5 of 1908] shall apply, with or without modification, to all or any classes] of cases before the Deputy Commissioner.

(2) When any provision of the said Code is applied by such rules, the rules may further declare that any provision of this Act which is superseded by, or inconsistent with, any provision so applied shall be deemed to be repealed.

(3) Until rules are made under sub-section (1), and subject to those rules when made and to the other provisions of this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908) 4[* * *].

4[* * *]

shall, as far as may be, and in so far as they are inconsistent with this Act, apply to all suits, appeals and proceedings before the

Deputy Commissioner under this Act and all appeals from decisions passed in such-suits or proceedings.

1. Subs. by A.L.O. for "Provincial".
2. Omitted by Act 38 of 1920.
3. For rules made under this section. see B. & O.R. & O. Vol. I., Pt, VI.
4. Omitted by Act 25 of 1947.

266. Publication Of Rules In Draft :-

(1) All powers conferred by this Act for making rules are subject to the condition that the rules be made after previous publication.

(2) Sub-section (1) shall not apply to any rules made and published in the 1[Official Gazette] within a period of two months from the commencement of this Act but all rules so made and published shall be re-issued, after previous publication, and with such amendments (if any) as the State Government may consider necessary, within a period of one year from such commencement.

1. Subs. by A. O. for "Calcutta Gazette".

267. Publication And Effect Of Rules And Notification :-

All rules made and notifications issued, under this Act shall be published in the 1[* *]

2[Official Gazette], and on such publication shall have effect as if enacted in this Act.

1. Omitted by Act 6 of 1920.
2. Subs. by A.O. for "Gazette;".

268. Recovery Of Dues :-

(1) Costs and interest awarded under this Act in rent suits 1[xxx] shall be recoverable as if they were arrears of rent.

(2) All costs 2[and interests] not referred to in sub-section (1) 2[and a damage compensation], fines and penalties, awarded or imposed under this Act, shall be recoverable in the manner provided in Chapter XVI for the recovery of money (not being arrears of rent) due under a decree.

1. Omitted by Act 2 of 1938.
2. Subs. by ibid.

269. Transfer Of Cases From One Revenue-Officer To Another :-

A Revenue- officer may at any time transfer any pending suit, application or proceeding under this Act from the file of any Revenue-officer acting under this Act to the file of any other Revenue-officer so acting who is duly authorized to entertain and decide such suit, application or proceeding.

270. Control Over Deputy Commissioners And Deputy Collectors :-

In the performance of their duties and exercise of their powers under this Act, Deputy Commissioners shall be subject to the general direction and control of the Commissioner and the Board, and Deputy Collectors exercising functions of the Deputy Commissioner shall also be subject to the direction and control of the Deputy Commissioner.

271. Saving Of Special Enactments :-

Nothing in this Act shall affect-

- (a) the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act, or
- (b) any other special or local law not repealed, either expressly or by necessary implication, by this Act.