

Kosi Area (Restoration Of Lands To Raiyats) Act, 1951

30 of 1951

[01 January 1939]

CONTENTS

1. Short title and extent
2. Definitions
3. Steps to be taken for restoration of land to raiyats
4. Notice to raiyat, landlord and any other person interested in the holding
5. Objection to the restoration of holding and manner of disposal
6. Non-appearance of landlord or any other person
7. Procedure if proceedings not dropped
8. Determination of areas and plots to be restored
9. Rights of raiyats on restoration
10. Application objecting to delivery of possession or for recovery of possession
11. Recovery of arrears of instalments as public demand
12. Payment of the amount deposited with or recovered by the Collector
13. Finality of orders
14. Costs of proceeding
15. Collector to be vested with certain powers under the Code of Civil Procedure
16. Appeals
17. Power to make Rules

Kosi Area (Restoration Of Lands To Raiyats) Act, 1951

30 of 1951

[01 January 1939]

PREAMBLE

An Act to provide for the restoration to former raiyats of certain lands which were sold for arrears of rent or from which they were ejected for arrears of rent of which were treated as abandoned, between the 1st day of January, 1939, and the 31st day of December, 1950, in the absence of the raiyats due to floods in the Kosi River.

WHEREAS it is expedient to provide for the restoration to former

raiylats of certain lands which were sold for arrears of rent or from which they were ejected for arrears of rent or which were treated as abandoned, between the 1st day of January, 1939, and the 31st day of December, 1950, in the absence of the raiyat due to floods in the Kosi river;

It is hereby enacted as follows:-

1. Legislative Papers.-For Statement of Objects and Reasons, see the Bihar Gazette, 1950, Pt. V, p. 752; for Report of the Select Committee, see *ibid.*, 1951, Pt. V. pp. 143-164; for Proceedings in the Legislative Assembly, see the Bihar Legislative Assembly Debates, 1950, Vol. II, no. 14, pp. 46-47, no. 19, pp. 17-18, 1951, Vol. III, no. 16, p. 22, no. 55, pp. 25-27, no. 56, pp. 9-21, no. 57, p.1, no. 58, pp. 2-40, no. 59, pp. 22-27; and for Proceedings in the Legislative Council, see the Bihar Legislative Council Debates, 1951, Vol. III, no. 41, p. 60, no. 45, pp. 19-12, no. 45, pp. 35-42.

1. Short title and extent :-

This Act may be called the Kosi Area (Restoration of Lands to Raiyats) Act, 1951.

(1) It shall extend to such areas of the districts of Bhagalpur, Monghyr, Purnea and Darbhanga as may be notified, from time to time, by the State Government.

2. Definitions :-

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

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

(b) "decree" includes a certificate signed under the Bihar and Orissa Public Demands Recovery Act, 1914;

(c) the expressions "holding", "landlord" and "raiyat" have the meaning assigned to them by the Bihar Tenancy Act, 1885; and

(d) "prescribed" means prescribed by Rules made under this Act.

3. Steps to be taken for restoration of land to raiyats :-

If the holding of a raiyat or portion thereof was sold in execution of a decree for arrears of rent or if a raiyat was ejected from a holding or portion thereof in execution of decree passed under sub-section (2) of Section 66 of the Bihar Tenancy Act, 1885, or if the holding of a raiyat or portion thereof was treated as abandoned under Section 87 of the said Act at any time between the 1st day of January, 1939, and the 31st day of December, 1950, and is in the possession of the landlord or any other person, the Collector may, if he thinks fit, of his own motion or otherwise, take steps for the restoration of such holding or portion thereof to the said raiyat.

4. Notice to raiyat, landlord and any other person interested in the holding :-

In a proceeding I started under Section 3, the Collector shall give notice of the proceeding to the raiyat, the landlord and any other person interested in the holding or portion thereof and direct them to appear before him and file objection, if any, on a date fixed in the notice.

5. Objection to the restoration of holding and manner of disposal :-

(1) On the date fixed in the notice, the landlord or any other person may appear and object to the restoration of the holding or portion thereof on anyone or more of the following grounds, namely:-

(a) that he has constructed any building or other structure of a permanent nature or planted any garden on the holding or any portion thereof before the date of the commencement of this Act and that such building, structure or garden is of such a value that the restoration of the land covered by such building, structure or

garden will be unfair; and

(b) that he has excavated any tank or sunk any pucca well on the holding or any portion thereof before the date of the commencement of this Act.

(2) The Collector shall thereupon make such inquiry as he thinks fit and if he decides-

(a) that such building, structure or garden is of such a value that the restoration of the land covered by such building, structure or garden will be unfair, the Collector shall,-

(i) if such building, structure or garden covers the entire holding or portion, drop the proceedings;

(ii) if such building, structure or garden covers only a part of such holding or portion, drop the proceedings in so far as they relate to the site of such building, structure or garden and the lands immediately appurtenant thereto and necessary for its enjoyment, and order that the proceedings shall proceed with respect to the remaining part of the holding or portion;

(b) that the objector has excavated any tank or sunk any pucca well, the Collector shall,-

(i) if such tank or well covers the entire holding or portion, drop the proceedings;

(ii) if such tank or well covers only a part of such holding or portion, drop the proceedings in so far as they relate to the site of such tank or well and the lands immediately appurtenant thereto and necessary for its enjoyment and order that the proceedings shall proceed with respect to the remaining part of the holding or portion.

Explanation.-In this section "garden" means a parcel of land having fruit trees, or bamboo clumps on it.

6. Non-appearance of landlord or any other person :-

If on the date fixed in the notice issued under Section 4 or on any date to which the matter may be adjourned, the landlord or any other person fails to appear after due service of notice, the Collector may proceed exparte.

7. Procedure if proceedings not dropped :-

(1) If the proceedings are not dropped under sub-section (2) of Section 5, the Collector shall-

(a) determine the land which is liable to be restored to the raiyat under the provisions of this Act;

(b) determine the amount which shall be payable by the raiyat to the restoration to him of such land;

(c) specify the person to whom the amount determined under clause (b) shall be payable:

Provided that where the Collector is of opinion that more than one person are entitled to the amount determined he shall also apportion the amount which shall be payable by the raiyat to each person;

(d) ascertain whether the raiyat desires to deposit the amount mentioned in clause (b) in one lump sum or in instalments;

(e) if the raiyat desires to deposit or pay the said amount in instalments, determine, having regard to the means and circumstances of the raiyat, the number and amount of such

instalments which shall be payable within a period not exceeding five years; and

(f) order that the raiyat shall be put in possession of such land,-

(i) if the amount determined under clause (b) is payable in one lump sum, as soon as possible after the raiyat has deposited with the Collector such lump sum; and

(ii) if the said amount is payable in instalments, as soon as possible after the raiyat has deposited with the Collector the amount of the first instalment.

(2) The amount to be determined under clause (b) of sub-section (1) shall be the cost of improvements if any, effected on the holding or portion thereof which the Collector may deem fair and equitable and,-

(a) where the holding or portion thereof is in possession of the landlord or any other person to whom it was sold in execution of a decree for arrears of rent-

(i) in the case of an entire holding or, if only a portion of a holding was sold, in the case of the whole of such portion, a sum equal to the entire amount, if any, which the raiyat or any person having a claim against the raiyat may have withdrawn out of the proceeds of the sale of such holding or portion and the aggregate of the amount mentioned in the sale proclamation for the realisation of which the holding or portion was sold and of the amount of costs necessarily incurred by the landlord, or any person to whom it was sold, in connection with his application for delivery of possession; and

(ii) in the case of a portion of a holding, if the entire holding was sold, or part of a portion, if only a portion of the holding was sold, such part of the sum mentioned in sub-clause (i) as the Collector

may deem fair and equitable after considering all the circumstances of the case including the value of the entire land sold and of the portion to be restored;

(b) where the holding or portion thereof is in possession of the landlord as a result of execution of a decree for ejectment under sub-section (2) of Section 66 of the Bihar Tenancy Act, 1885, a sum equal to the amount of arrears of rent with interest thereon legally recoverable on the date of the institution of the suit for ejectment and costs of the suit mentioned in the decree passed under sub-section (2) of Section 66 of the Bihar Tenancy Act, 1885;

(c) where the holding or portion thereof is in possession of the landlord as a result of abandonment under Section 87 of the Bihar Tenancy Act, 1885 a sum equal to the amount of arrears of rent with interest thereon legally recoverable on the date of abandonment; and

(d) where the holding or portion of such holding is in possession of any person, other than the landlord or any person to whom it was sold in execution of a decree for arrears of rent, by settlement, sale, mortgage or any other kind of transfer, a sum equal to the amount of salami, consideration money or, where there is no document of transfer or where no consideration money is mentioned in the document of transfer, any amount that the Collector may deem fair and equitable in the circumstances of the case:

Provided that in the case of a settlement, sale, mortgage or any other kind of transfer made or created at any time after the 31st December, 1950, the Collector shall hear the raiyat and the parties to the transfer and make such inquiry as he thinks fit in respect of the amount of the salami or consideration money mentioned in the document of transfer and, if he is satisfied that the amount was mentioned in the document with the object of obtaining a higher amount under this clause, determine the actual amount of salami or consideration money paid under the document.

(3) When the Collector passes an order under clause (f) of sub-section (1), he shall deliver possession of the land mentioned in such order,-

(a) in the case mentioned in sub-clause (i) of clause (f) of sub-section (1), as soon as possible after the raiyat has deposited with the Collector the sum mentioned in the said sub-clause; and

(b) in the case mentioned in sub-clause (ii) of clause (f) of the said sub section, as soon as possible after the raiyat has deposited with the Collector the amount referred to in the said sub-clause.

8. Determination of areas and plots to be restored :-

When the Collector directs under any of the provisions of this Act that only a part of the holding or portion shall be restored to the raiyat, he shall-

(a) determine the area and the plots which shall be restored to the raiyat, and the area and the plots which shall remain in the possession of the landlord or any other person; and

(b) apportion and determine in the prescribed manner the rent which shall be payable to the landlord by the raiyat, for the area restored to him or by other person for the area remaining in his possession.

9. Rights of raiyats on restoration :-

Notwithstanding anything to the contrary contained in any law for the time being in force, when any land is restored to a raiyat under the provisions of this Act,-

(a) any mortgage or charge created by the landlord or any other

person in respect of such land or any portion thereof shall not be binding on the raiyat and

(b) all such rights as the raiyat had in respect of the said land and the incidents thereof before the sale, ejectment or abandonment shall revive.

10. Application objecting to delivery of possession or for recovery of possession :-

(1) If the land mentioned in an order under clause (f) of sub-section (1) of Section 7 or any portion thereof was before the date of the commencement of the proceedings under Section 3, in possession of any person who had no notice of the proceeding in which the order for delivery of possession was passed, such person may make an application to the Collector-

(a) in case possession of the land has not been delivered under sub-section (3) of Section 7, at any time after the passing of the order under clause (f) of sub-section (1) of Section 7, objecting to the delivery of possession of such land to the raiyat;

(b) in case possession of the land has been delivered under sub-section (3) of Section 7, within one month from the date on which person is dispossessed, complaining of such dispossession.

(2) On receipt of an application under sub-section (1), the Collector shall fix a date for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

(3) If the Collector, after making such inquiry as he thinks fit, is satisfied that the land or any portion thereof was, before the date of the commencement of the proceedings under Section 3, in possession of the applicant on his own account or on account of some person who was not a party to the proceeding in which the

order for delivery of possession was passed, the Collector shall hear the parties and determine whether such land or portion is liable to be restored to the raiyat under the provisions of this Act. In case the Collector finds that such land or portion is liable to be restored to the raiyat the Collector shall make such modifications as may be necessary in the order passed under sub-Section (1) and (3) of Section 7. But if the Collector finds that such land or portion is not liable to be restored to the raiyat under the provisions of this Act, the Collector shall not deliver possession of the same to the raiyat and, where possession of such land or portion has been delivered to the raiyat the Collector shall put the applicant in possession of the same.

(4) Any person referred to in sub-section (1) shall not be entitled to any remedy except as provided in Section 16.

11. Recovery of arrears of instalments as public demand :-

If the amount mentioned in clause (b) of sub-section (1) of Section 7 is payable in instalments and the first instalment has been deposited under clause (f) of the said sub-section, the subsequent instalments shall be recoverable by the Collector as a public demand under the Bihar and Orissa Public Demands Recovery Act, 1914.

12. Payment of the amount deposited with or recovered by the Collector :-

Any amount deposited with the Collector under clause (f) of sub section (1) of Section 7 or recovered by the Collector under Section 11 as the amount payable to any person specified under clause (c) of sub-section (1) of Section 7 shall be entered in the prescribed register and paid by the Collector to such person:

Provided that nothing herein contained shall affect the liability of any person who may receive the whole or any part of such amount to pay the same to the person lawfully entitled thereto.

13. Finality of orders :-

Every order passed by the Collector under this Act, shall, subject to any order passed in appeal under Section 16, be final, and no Civil

Court shall entertain any suit or application to vary or set aside any decision or order given or passed under this Act.

14. Costs of proceeding :-

The Collector shall have power to award costs to any party to any proceeding under this Act and any sum ordered to be paid as costs shall be recoverable from the party by whom it is payable as a public demand under the Bihar and Orissa Public Demands Recovery Act, 1914.

15. Collector to be vested with certain powers under the Code of Civil Procedure :-

The Collector when acting under any of the provisions of this Act, shall have the same powers as are vested in a Court under the Code of Civil Procedure, 1908, in respect of enforcing the attendance of any person and examining him on oath or affirmation and compelling the production of documents.

16. Appeals :-

(1) From every order passed under this Act, an appeal shall lie, when the order was made-

(a) by the Collector, of a district, to the Commissioner;

(b) by any officer other than the Collector of the district, to the Collector of the district or to any officer specially empowered by the State Government, by notification, to hear such appeals; and the decision of the Commissioner or the Collector of the district or any officer so empowered shall be final.

(2) The Collector of the district may, at any time, transfer any appeal already filed before him to any officer specially empowered under clause (b) of sub-section (1) to hear such appeals, 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.

(3) Appeals under this section shall be heard and disposed of in accordance with the prescribed procedure.

17. Power to make Rules :-

(1) The State Government may make Rules for the purpose of carrying out the provisions of this Act.

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

(a) the form of any application or register under this Act and the particulars to be contained in such application or register;

(b) the form of any process required to be served under this Act and the manner in which such process shall be served;

(c) the manner in which rent shall be determined under clause (b) of Section 8; and

(d) the procedure for hearing and disposal of appeals filed under Section 16.