

## **Orissa Tenancy Act, 1913**

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## **SCHEDULE 3 :- SCHEDULE III**

### **Orissa Tenancy Act, 1913**

An Act to amend and consolidate certain enactments relating to the law of landlord and tenant in the districts of Cuttack, Puri and Balasore, in the Orissa Division Whereas it is expedient to amend and consolidate certain enactments relating to the law of landlord and tenant in the districts of Cuttack, Puri and Balasore, in the Orissa Division; And Whereas the previous 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: \*. Published vide B. & O. No. 2 of 1913

#### **CHAPTER 1 PRELIMINARY**

##### **1. Short Title, Commencement And Local Extent :-**

- (1) This Act may be called the Orissa Tenancy Act, 1913.
- (2) It shall come into force on such date as the State Government, as the previous sanction of the Central Government may, by notification in the Official Gazette, appoint in this behalf; and
- (3) It shall extend to the districts of Cuttack, Puri and Balasore in the State of Orissa, except any area or part of an area which is constituted as a Municipality under the Bengal Municipal Act, 1884 (Bengal Act III of 1884), and which is specified in this behalf by notification issued by the State Government.

##### **2. Repeal :-**

The enactments specified in Schedule I are hereby repealed in the area to which this Act extends.

##### **3. Definitions :-**

- (1) In this Act, unless there is something repugnant in the subject or. context
- (1) "agricultural year" means the year commencing on the first day of Baisakh of the Oriya year;  
Provided that the first agricultural year shall be deemed to commence on the first day of Baisakh following the date of the commencement of this Act;
- (2) "bazyaftidar" means a person holding lands the title to hold which upon special terms was declared invalid by the Cuttack Land

Revenue Regulation, 1805 (XII of 1805), the Bengal Land Revenue Assessment (Resumed Lands) Regulation, 1819 (II of 1819) or the Bengal Revenue-free Lands Regulation, 1825 (XIV of 1825) and which have been assessed, in the course of a settlement of land-revenue, at a rent fixed for the term of that settlement; and includes also the successors-in-interest of such person;

(3) "chandnadar" means a person holding land which has been recorded as chandana in the course of a settlement of land-revenue, and for which a rent has been fixed for the term of that settlement; and includes also the successor-in-interest of such a person;

"Collector" in any provision of this Act means the Collector of a district, and includes also -

(a) any Revenue Officer or Deputy Collector who is specially empowered by the State Government to discharge any of the functions of a Collector under that provision, and

(b) any Deputy Collector to whom the Collector may, by general or special order approved by the Commissioner, transfer any of his functions under that provision, other than functions covered by Section 204;

(5) "Commissioner" means a person appointed by the State Government to exercise the powers and functions of the Commissioner under this Act;

(6) "Deputy Collector" includes an Assistant Collector and a Sub-Deputy Collector.

(7) "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 Collector of a district; and includes Government khasmahals and revenue-free lands not entered in any register; and includes also the sub-proprietary interests referred to in Clause (20);

(8) "holding" means a parcel or parcels of land held by a, raiyat and forming the subject of a separate tenancy;

(9) "landlord" means a person immediately under whom a tenant holds, and includes the Government;

(10) "pay", "payable" and "payment" used with reference to rent, include "deliver", deliverable and "delivery".

(11) "permanent settlement" means the permanent settlement of portions of Orissa, made in the year 1793 and in subsequent years;

(12) "permanent tenure" means a tenure which is heritable and which is not held for a limited time;

(13) "prescribed" means prescribed by the State Government by

notification in the official Gazette;

(14) "proprietor" means a person owning whether in trust or for his own benefit, an estate or a part of an estate; and includes also the sub-proprietary interests referred to in Clause (21);

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

(16) "rent" means whatever is lawfully payable or deliverable 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;

for the purpose of Sections 62 to 77 and 82 to 85, Chapter XIII, Chapter XVI and Schedules III, "rent" includes also money recoverable under any enactment for the time being in force as if it was rent;

(17) "Revenue Court" means any Court (other than a Civil Court) having jurisdiction under this Act to entertain suits or other proceedings;

(18) "Revenue Officer" in any provision of this Act, means any officer whom the State Government may appoint to discharge any of the functions of a Revenue Officer under that provision;

(19) "signed" includes "marked" when the person making the mark is unable to write his name; it also includes "stamped with the name of the person referred to;

(20) "sub-proprietary Interest" means the interest of a sub-proprietor;

(21) "sub-proprietor" means a person who, in the course of a settlement of land-revenue, has executed an engagement for the payment of his land-revenue through a proprietor or another sub-proprietor; and includes also-

(i) persons holding lands the title to hold which for a payment fixed in perpetuity was declared valid by the Cuttack Land Revenue Regulation, 1805 (XII of 1805); and

(ii) the successor-in-interest of any person as aforesaid;

(22) "succession" includes both intestate and testamentary succession;

(23) "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;

(24) "tenure" means the interest of a tenure-holder or an undertenure-holder; and

(25) "village" means the area defined, surveyed and recorded as a distinct and separate village in-

(a) the general land-revenue survey which has been made of the

Province of Bengal, or

(b) any survey made by the Government which may be adopted any notification in the official Gazette as defining villages for the purposes of this Clause in any specified area; and, where a survey has not been made, by, or under the authority of, the Government, "village" means such area as the Collector may, with the sanction of the Board of Revenue, by general or special order, declare to constitute a village.

## **CHAPTER 2 CLASSES OF TENANTS**

### **4. Classes Of Tenants :-**

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

- (1) tenure-holders, including under-tenure-holders,
- (2) raiyats,
- (3) under-raiyats, that is to say, tenants holding, whether immediately, or mediately, under raiyats, and
- (4) chandnaders;

and the following classes of raiyats, namely;

- (a) raiyats holding at fixed rates, which expression means raiyats holding either at a rent fixed in perpetuity or at a rate of rent fixed in perpetuity,
- (b) occupancy-raiyats, that is to say, raiyats having a right of occupancy in the land held by them, and
- (c) non-occupancy-raiyats, that is to say, raiyats not having such a right of occupancy;

### **5. Meaning Of Tenure-Holder And Raiyats" :-**

(1) "Tenureholder means primarily a person who has acquired from a 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 also the successor-in-interest of persons who have acquired such a right.

(2) "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 also the successors-in-interest or persons who have acquired such a right.

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 on it.

(3) 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.

(4) 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.

Explanation - In ascertaining the purpose for which the right of tenancy was originally acquired, the Court may have regard to the subsequent conduct of the parties.

(5) Where the area held by a tenant exceeds thirty-three acres, the tenant shall be presumed to be a tenure-holder until the contrary is shown.

## **6. Status Of Bazyaftidars And Sub-Proprietors :-**

Notwithstanding anything hereinbefore contained -

(i) every bazyaftidar who is recorded in any record-of-rights finally published under Chapter XI or under any other law for the time being in force, as a bazyaftidar tenure holder, and his successors-in-interest, shall be deemed to be a tenure-holder, for all the purpose of this Act;

(ii) every bazyaftidar who is recorded in any such record-of-rights as a bazyaftidar raiyat, and his successors-in-interest, shall be deemed to be a raiyat for the purpose of this, Act; and

(iii) every sub-proprietor shall be deemed to be a tenure-holder for the purposes of Sections 14 to 20, 99, 100 and Chapter XVI, and to be a permanent tenure-holder for the purpose of Section 74.

## **CHAPTER 3 TENURE-HOLDERS ENHANCEMENT OF RENT**

### **7. Tenure In A Permanently Settled Area Held Since Permanent Settlement Liable To Enhancement Only In Certain Cases :-**

Where a tenure in a permanently- settled area has been held from the time of the permanent settlement, its rent shall not be liable to enhancement, except on proof-

(a) that the landlord under whom it is held is entitled to enhance the rent thereof either by local custom or by the conditions under

which the tenure is held, or

(b) that the tenure-holder, by receiving reductions of his rent, otherwise than on account of a diminution of the area of the tenure, has subjected-himself to the payment of the increase demanded, and that the lands are capable of affording it.

### **8. Limits Of Enhancement Of Rent Of Tenures :-**

(1) Where the rent of a tenure-holder is liable to enhancement, it may, subject to any contract between the parties, be enhanced up to the limit of the customary rate payable by persons holding similar tenures in the vicinity.

(2) Where no such customary rate exists, it may, subject as aforesaid, be enhanced up to such limit as the Court thinks fair and equitable.

(3) In determining what is fair and equitable, the Court shall not leave to the tenure-holder as profit less than ten per centum of the balance which remains after deducting from the gross rents payable to him the expenses of collecting them, and shall have regard to

(a) the circumstances under which the tenure was created, for instance, whether the land comprised in the tenure, or a great portion of it, was first brought under cultivation by the agency or at the expense of the tenure-holder or his predecessor-in-interest, whether any fine or premium was paid on the creation of the tenure, and whether the tenure was originally created at a specially low rent for the purpose of reclamation; and

(b) the improvements (if any) made by the tenure-holder or his predecessors-in-interest.

(4) If the tenure-holder himself occupies any portion of the land included in the area of his tenure, or has made a grant of any portion of the land either rent-free or at a beneficial rent, a fair and equitable rent shall be calculated for that portion and included in the gross rents aforesaid.

### **9. Power To Order Gradual Enhancement :-**

The Court may, if it thinks that an immediate increase of rent would produce hardship, 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 enhancement allowed has been reached.

### **10. Rent Once Enhanced May Not Be Altered For Fifteen**

## **Years :-**

When the rent of a tenure-holder has been enhanced by the Court or by contract, it shall not be again enhanced by the Court during the fifteen years next following the date on which it has been so enhanced.

### **11. Permanent Tenure-Holder Not Liable To Ejectment :-**

A holder of a permanent tenure shall not be ejected by his landlord, except on the ground that he has broken a condition on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected:

Provided that where the contract was made after the commencement of this Act, the condition is consistent with the provisions of this Act.

### **12. Transfer And Transmission Of Permanent Tenure :-**

Every permanent tenure shall, subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as other immovable property.

### **13. Saving As To Resumable And Non-Transferable Tenures :-**

Nothing in Section 11 or in Section 12 shall affect the right of the landlord to resume of resumable tenure, or shall validate the transfer of a tenure or portion thereof which, by the terms upon which it is held or by local custom, is not transferable.

### **14. Transfer Of Tenure By Succession :-**

(1) In the case of every transfer of a tenure or portion of a tenure by succession shall pay him a fee amounting to rupee two, except in the case of a bazyaftidar when, the fee shall be rupee one.

(2) If, in any such case, the landlord refuses to accept the requisite fee, the transferee or his heir may deposit such fee with the Collector, and at the same time, apply for registration of the transfer. The Collector, after giving notice to the landlord to appear and be heard, shall decide whether the applicant is the successor or not; and, if satisfied that such applicant is the successor, he shall cause the fee to be delivered to the landlord in the prescribed manner, and shall, by an order in writing, declare that the transfer

has been duly registered.

(3) If an application for the registration of the transfer of a tenure or portion thereof under Sub-section (1) is not made within a period of six months from the date of the transfer, and if the registration fee authorised by the said Sub-section is not deposited along with the application, the transferee or his heir 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.

### **15. Right Of Certain Tenure-Holders To Transfer Without Consent Of Landlord :-**

(1) The following classes of tenure-holders are entitled to transfer their tenures or portions thereof by sale, gift or exchange without the consent of their landlords-

- (a) Sub-proprietor other than sarbarakars,
- (b) persons holding land which has been recorded at a settlement of land revenue as shikmi kharida or kharida jamanbandi, and
- (c) bazyaftidars:

Provided that a fee of rupees five shall be paid to the landlord in respect of the registration of such tenure or portion, except in the case of a bazyaftidar, when the fee shall be rupees two.

(2) If, in any such case, the landlord refuses to accept the requisite fee, the transferee or his successor-in-interest may deposit such fee with Collector, and, at the same time, apply for registration of the transfer. The Collector shall thereupon cause the fee to be delivered to the landlord in the prescribed manner, and shall, by an order in writing, declare that the transfer has been duly registered.

(3) If an application for the registration of the transfer of any tenure or portion thereof under Sub-section (1) is not made within a period of six months from the date of the transfer, and if the registration fee authorised by the said sub-section is not deposited along with the application, the transferee or his heir 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.

### **16. Transfer In Other Cases :-**

(1) In cases other than those covered by Sec. 15, when any tenure



or portion of a tenure is transferred by sale, gift or exchange, the transferee or his successor-in-interest shall apply to the landlord to whom the rent of the tenure or portion thereof is payable for registration of the transfer, and, the landlord shall, in the absence of good and sufficient reason to the contrary, allow the registration of the transfer. The fee payable on such transfer shall be-

(a) in the case of a sale, rupees twenty-five per centum of the consideration money or the fee specified in Clause (b) whichever is greater, and

(b) in the case of gift or exchange, a fee six times the annual rental of the tenure or portion thereof, as the case may be, or, if rent be not payable in respect of the tenure or portion, then a fee of rupees ten.

(2) if, in any such case, the landlord accepts the fee authorised by Sub-section (1), his consent to the transfer shall be deemed to have been given.

(3) If, in any such case, the landlord refuses to accept the requisite fee, the transferee or his successor-in-interest may deposit such fee with the Collector, and at the same time, apply for registration of the transfer. The Collector, after giving notice to the landlord to appear and be heard, shall decide whether the tenure is transferable by custom without the consent of the landlord and whether the landlord, has any good and sufficient reason to refuse his consent to the transfer; and, if the Collector finds that the tenure is so transferable, and that the landlord has no good and sufficient reason to refuse his consent to the transfer, he shall cause the said fee to be delivered to the landlord in the prescribed manner, and shall, by an order in writing, declare that the transfer has been duly registered.

(4) If an application for the registration of the transfer of any tenure or portion thereof under Sub-section (1) is not made within a period of six months from the date of the transfer, and if the registration fee authorised by the said Sub-section is not deposited along with the application, the transferee or his successor-in-interest 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.

## **17. Right Of Suit In Civil Court Regarding Transferability :-**

No decision of the Collector under Sections 14, 15 or 16 shall be affect the right of the landlord or of the transferee to establish the transferability or otherwise of the tenancy by suit in the Civil Court.

**18. Effect Of Transfer Of Portion Of A Tenure :-**

The transfer of a portion of a tenure and the registration of the same under Sections 14, 15 or 16 shall not be deemed to constitute a division of tenure unless such portion is defined by metes and bounds.

The transferee of such a portion of tenure which is not defined by metes and bounds and the holder of the reminder of such a tenure shall be jointly and severally liable to the landlord for the rent of the entire tenure, unless the landlord has consented in the manner specified in Section 99 to a division of tenure or to a distribution of rent thereof.

**19. Fee On Application Under Sections 14, 15 Or 16 :-**

An application to the Collector under Sections 14, 15 or 16 shall be accompanied by such fee, in addition to the fee payable to the landlord, as the State Government may, by rules direct.

**20. Return Of Landlords Fee :-**

If an application under Section 14 or 16 be disallowed, the Collector shall return the landlords to the applicant.

**CHAPTER 4 RAIYATS HOLDING AT FIXED RATES**

**21. Incidents Of Holding At Fixed Rates :-**

(1) A raiyat holding at a rent, or rate of rent, fixed in perpetuity-

(a) shall be subject to the same provisions with respect to the transfer of, and succession to, his holding as the holder of a permanent tenure, and

(b) shall not be ejected by his landlord, except on the ground that he has broken a condition consistent with this Act, and on breach of which he is, under the terms of a contract between him and his landlord, liable to be ejected.

(2) Nothing in this section shall affect the right of the landlord to resume a resumable holding, or validate the transfer of a holding or portion thereof which, by the terms upon which it is held or by local custom, is not transferable.

## **CHAPTER 5 OCCUPANCY-RIGHTS**

### **22. Continuance Of Existing Occupancy-Rights :-**

Every raiyat who immediately before the commencement of this Act has, by the operation of any enactment, by custom or otherwise, a right of occupancy in any land, shall, when this Act comes into force, have a right of occupancy in that land.

(2) The exclusion from the operation of this Act, by a notification under Sub-section (3) of Section 1, of any area or part of an area which is a Municipality constituted under the Bengal Municipal Act, 1884 (Bengal Act III of 1884) shall not affect any right, obligation or liability previously acquired, incurred, or accrued in reference to such area or part.

### **23. 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 purpose of this Section, to have held as a raiyat any land held as a raiyat by person whose heir he is.

(4) Land held by two or more co-sharers as a raiyati holding shall be deemed, for the purpose 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 a village as long as he holds any land as a raiyat in that village and for one year thereafter.

(6) If a raiyat recovers possession of land under Section 98, he shall be deemed to have continued to be a settled raiyat, notwithstanding his having been put of possession more than a year.

(7) If, any suit or other proceeding under this Act, or under any other law, 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 purpose of this Section until the contrary is

proved or admitted, that he had for twelve years continuously held that land or some part of it as raiyat.

#### **24. Settled Raiyats To Have Occupancy Right :-**

(1) Every person who is a settled raiyat of a village within the meaning of Section 23 shall have a right of occupancy in all land for the time being held by him as a raiyat in that village.

(2) Every person who, being a settled raiyat of a village within the meaning of Section 23 held land as a raiyat in that village at any time between the tenth day of September, 1891 and the commencement of this Act, shall be deemed to have acquired a right of occupancy in that land under the law then in force; but nothing in the sub-section shall effect any decree or order passed by a Court before the commencement of this Act.

#### **25. Acquisition Of Occupancy Rights In An Area Not Included In A Village :-**

(1) Every raiyat 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 an area which is not included in a village as defined in Clause (25) of Section 3, shall be deemed to have become an occupancy-raiyat in respect of that land.

(2) The holding of the father or other person from whom a raiyat inherits shall be deemed to be the holding of the raiyat within the meaning of this section.

(3) Nothing contained in Sub-section (1) of Sub-section (2) shall be held to affect the terms of any written contract for the cultivation of land in the aforesaid area, entered into between a land-holder and a raiyat, when it contains any express stipulation contrary thereto.

#### **26. Effect Of Acquisition Of Occupancy Right By Landlord :-**

(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 have no right to hold the land as a tenant but shall hold it as a proprietor or permanent tenure-holder (as the case may be); 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 have no right to hold the land as a raiyat shall hold it as a proprietor or permanent tenure-holder, as the case may be, and shall pay to his co- sharers a fair and equitable sum for the use and occupation of the same.

(3) In determining from time to time what is a fair and equitable sum under Sub-section (2) 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 rents of occupancy-raiyats.

(4) 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 of occupancy in any land comprised in his lease or mortgage.

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 as a temporary tenure-holder, ijaradar or farmer of rents or mortgagee.

## **27. Rights Of Raiyat In Respect Of Use Of Land :-**

When a raiyat has a right of occupancy in respect of any land, he may use the land in any manner which does not materially impair the value of the land or render it unfit for the purpose of the tenancy.

### **27A. Specific Rights Of An Occupancy Raiyat :-**

Notwithstanding anything contained in Section 27 when a raiyat has a right of occupancy in respect of any land he shall be entitled:

(i) to plant;

(ii) to enjoy the flowers, fruits and other products of;

(iii) to fell; and

(iv) to utilise or dispose of the timber of,

any tree on such land, and any such act shall not render him liable, to ejectment under Section 29 of this Act;

Provided that where there is a specific entry in favour of the landlord in the last record-of-rights published before the commencement of the Orissa Tenancy (Amendment) Act, 1958, regarding any tree now standing on any occupancy holding the

right of the landlord in such tree shall be in accordance with such entry or with any decision of a Civil Court affecting such entry notwithstanding anything to the contrary contained in this Section : Provided further that it shall be open to a raiyat on payment to the landlord of such compensation as may be fixed by the Collector, on an application made to him in that behalf to acquire the rights reserved to a landlord as aforesaid.

### **28. Obligation Of Raiyat To Pay Rent :-**

An occupancy raiyat shall pay rent for his holding at fair equitable rates.

### **29. Protection 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 renders it unfit for the purpose of the tenancy; or
- (b) that he has broken a condition consistent with the provisions of this Act, and on breach of which he is under the terms of a contract between himself and his landlord liable to be ejected.

### **30. Devolution Of Occupancy Right On A Raiyat :-**

If a raiyat dies intestate in respect of a right of occupancy, it shall, subject to any 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 the Government, his right of occupancy shall be extinguished.

### **30A. Transfer Of Occupancy Holding :-**

(1) The occupancy holding of a raiyat, or a portion or share thereof shall be transferable, by sale, exchange, gift or bequest without the landlords consent and without payment of any fee to him. Such transfer shall carry with it the occupancy right in the holding appurtenant thereto.

(2) An occupancy raiyat may sub-let or mortgage his holding or a portion or share thereof without his landlords consent.

### **31. Manner Of Transfer And Notice To Landlord :-**

(1) Every transfer of an occupancy holding or a portion or share thereof whether by sale, exchange or gift shall be made by registered instrument except in the case of a sale in execution of a decree or of a certificate signed under the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act IV of 1914):

Provided that the State Government may exclude, from the operation of this sub-section, any class of transfer of occupancy holdings in any Government estate of which rent is payable of this Section in such estates and prescribe fines or penalties for the infringement of such rules :

Provided further that nothing in this Section shall be deemed to affect the provisions of the Mohammedan Law relating to gift, and in such cases of transfer the rules made under the first proviso shall have effect.

(2) A registering officer shall not accept for registration any such instrument unless the rent of each holding or a portion or share thereof is stated separately in the instrument and unless it is accompanied by a notice signed by the transferor and the transferee giving particulars of the transfer in the prescribed form and the fee prescribed for the service of such notice on the landlord.

(3) When any such instrument is admitted to registration, the registering officer shall transmit the notice to the Collector who shall cause it to be served on the landlord named in the notice in the prescribed manner :

Provided that when a sole landlord purchases a holding or a portion or share thereof notice need to be served.

(4) In the case of a transfer of an occupancy holding or a portion or share thereof by bequest, the Court shall, before granting probate or letters of administration, require the applicant to file a notice giving particulars of the transfer in the prescribed form accompanied with the prescribed fee for the service of the notice on the landlord. When probate or letters of administration have been granted, the Court shall transfer the notice to the Collector who shall cause it to be served on the landlord named in the notice in the prescribed manner.

(5) When the holding of an occupancy raiyat or a portion or share thereof is sold in execution of a decree or of a certificate signed under the Bihar and Orissa Public Demand Recovery Act, 1914 (B. and O. Act IV of 1914) other than a decree or certificate for arrears

of rent due in respect of the holding or dues recoverable as such, and neither the purchaser nor the decree holder is the sole landlord, the Court or the Revenue Officer, as the case may be, shall, before confirming the sale, require the purchaser to file a notice giving particulars of the transfer in the prescribed form and to deposit a fee of the prescribed amount for the service of it. When the sale has been confirmed, the Court or the Revenue Officer shall transmit the notice to the Collector who shall cause it to be served on the landlord in the prescribed manner.

(6) When a mortgage of a holding of an occupancy raiyat or of a portion or share thereof is foreclosed and the decree-holder is not himself the sole landlord, the Court shall before making a decree or order absolute for the foreclosure, require the mortgagee to file a notice giving particulars of the transfer in the prescribed form and to deposit fee of the prescribed amount for the services of it. When the decree or order for foreclosure has been made absolute, the Court shall transmit the notice to the Collector who shall cause it to be served on the landlord in the prescribed manner.

(6 - A) Notwithstanding anything contained in the preceding provisions of this Section, in any case of transfer of an occupancy holding or a portion or share thereof in a Government estate, of which rent is payable direct to Government, the notices referred to in Sub-sections (1) to (6) shall not be required to be accompanied any fee for the service of such notices on the landlord and need not be served by the Collector on the State Government as landlord.

(7) Nothing in this Section shall bar any suit in a Civil Court for establishing setting aside a transfer.

**31A.** Distribution Of Rent On Transfer Of Portion Of Occupancy Holding :-

(1) In the case of a transfer of a portion or share of an occupancy holding by sale, exchange, gift or bequest which is not defined by metes and bounds, the transferee and the persons possessing interest in the remainder of the holding shall be considered as joint tenants by the landlord.

(2) In case the transfer is by sale, exchange, gift or bequest and is of a portion of an occupancy holding and the portion is defined by metes and bounds the landlord shall be deemed to agree to the division of land and the distribution of rent as set forth in the notice referred to in Section 31 unless within six months of the date of service of notice, an application is filed by him to the Collector for a just and equitable distribution of rent. The collector shall, on such



application by the landlord or by any other person within such period, hold an enquiry in the prescribed manner and order a distribution of rent which is fair and equitable.

**31B.** Payment Of Fees For Transfer Of Occupancy Holding Made Before The Commencement Of The Orissa Tenancy (Amendment) Act, 1938 :-

(1) Notwithstanding anything contained in this Act, any transferee who obtained a transfer of an occupancy holding or a portion or a share thereof, before the commencement of the Orissa Tenancy (Amendment) Act, 1938, shall be liable to pay the fees lawfully payable by him at the time of the transfer, within four years from the coming into force of that Act or the date of the landlords knowledge of the transfer whichever is later but he shall not be liable to ejectment on the ground that the landlord has not given his consent, to the transfer.

(2) The holding or a portion or a share thereof shall not be liable to be sold in satisfaction of the decree for arrears of rent without making the said transferee a party to the proceedings in execution of the decree; provided that the transferee has given notice of transfer by registered post to the landlord.

Explanation - Notwithstanding anything contained in this Act or in the Code of Civil Procedure, in the case of a transfer of a holding or a portion or a share thereof, whether before or after the decree may be brought on record in the proceedings in execution either in substitution of or in addition to the judgment-debtor, and such transferee shall, when so added or substituted, be treated as a judgment-debtor for all purposes of the said proceedings in execution of the decree.

**32.** Presumption As To Fair And Equitable Rent :-

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

**33.** Restriction On Enhancement Of Money Rents :-

Where an occupancy raiyat pays his rent in money, his rent shall not be enhanced, except as provided by this Act.

**34.** Enhancement Of Rent By Contract :-

The money-rent of an occupancy raiyat may be enhanced by contract, subject to the following conditions:

- (a) the contract must be in writing and registered;
- (b) the rent must not be enhanced so as to exceed by more than two annas in the rupee the rent previously payable by the raiyat;
- (c) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract:

Provided as follows:

- (i) Nothing in Clause (a) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed:
- (ii) nothing in Clause(b) shall apply to a contract by which a raiyat binds himself to pay an enhanced rent in consideration of an improvement, which has been or is to be effected in respect of the holding by, or at the expense of, his landlord, and to the benefit or which the raiyat is not otherwise entitled; but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected and, except when the raiyat is chargeable with default in respect of the improvement, only so long as the improvement exists and substantially produces its estimated effect in respect of the holding;
- (iii) when a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord, nothing in Clause (b) shall prevent the raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.

### **35. Enhancement Of Rent By Suit :-**

The landlord of a holding held at a money-rent by an occupancy-raiyat may, subject to the provisions of this Act, institute a suit to enhance the rent on one or more of the following grounds, namely:

- (a) that the rate of rent paid by the raiyat is below the prevailing rate paid by occupancy-raiyats for land of a similar description and with similar advantages in the same villager in neighbouring villages, and that there is no sufficient reason for his holding at so low a rate;
- (b) that there has been a rise in the average local prices of staple

food-crops during the currency of the present rent;

(c) that the productive powers of the land held by the raiyat have been increased by an improvement effected by, or at the expense of, the landlord during the currency of the present rent;

(d) that the productive powers of the land held by the raiyat have been increased by fluvial action.

Explanation - Fluvial action includes a change in the course of a river rendering irrigation from the river practicable when it was not previously practicable.

### **36. Rules As To Enhancement On Grounds Of Prevailing Rate :-**

Where an enhancement is claimed on the ground that the rate of rent paid is below the prevailing rate -

(a) in determining what is the prevailing rate, the Court shall have regard to the rates generally paid during a period of not less than three years before the institution of the suit, and shall not decree an enhancement unless there is a substantial difference between the rate paid by the raiyat and the prevailing rate found by the Court;

(b) if, in the opinion of the Court, the prevailing rate of rent cannot be satisfactorily ascertained without a local inquiry, the Court may direct that a local inquiry be held under Order XXVI in the first Schedule to the Code of Civil Procedure, 1908 (V of 1908) by such Revenue Officer as the State Government may authorise in that behalf by rules made under Rule 9 in the said Order;

(c) in determining under this section the rate of rent payable by a raiyat, his caste shall not be taken into consideration, unless it is provided that by local custom caste is taken into account in determining the rate; and whenever it is found that by local custom any description of raiyats hold land at favourable rates of rent, the rate shall be determined in accordance with that custom;

(d) in ascertaining the prevailing rate of rent, the amount of any enhancement authorised on account of a landlord's improvement shall not be taken into consideration;

(e) if a favourable rate has been determined under Clause (c) for any description of raiyats, such rate may, if the Court thinks fit, be left out of consideration in ascertaining the prevailing rate;

(f) if the holding is held at a lump rental, the determination of the rent to be paid may be made by ascertaining the different classes of land comprised within the holding and applying to the area of each class the prevailing rate paid on that class within the village or

neighbouring villages.

### **37. What May Be Taken In Certain Districts To Be The Prevailing Rate :-**

In any district or part of a district to which this section is extended by the State Government by notification in the official Gazette, whenever the prevailing rate for any class of land is to be ascertained under Section 35, Clause (a), by an examination of the rates at which lands of a similar description and with similar advantages are held within any village or villages, the highest of such rates at which, and at rates higher than that which the larger portion of those lands is held may be taken to be the prevailing rate.

Illustration:

(a) The rates at which land of a similar description and with similar advantages is held in a village are as follows:

Acres @ Rs. A. P.

100 " 1 0 0

200 1 8 0

150 1 12 0

100 2 0 0

150 2 4 0

Total 700

Then Rs. 2.4 is not the prevailing rate, because only 150 acres, or less than half, are held at that rate. Rupees 2 is not the prevailing rate, because 250 acres, or less than half, are held at that or a higher rate. Rupee 1-12 is the prevailing rate, because 400 acres, or more than half are held either at this or a higher-rate; and this is the highest rate at which, and at rates higher than which, more than half the land is held.

(b) The rates at which land of a similar description and with similar advantages is held in a village are as follows :

Acres @ Rs. A. P.

100 " 1 0 0

250 " 1 4 0

150 " 1 8 0

150 " 1 12 0

50 " 2 0 0

Total 700

Then for the reasons given in illustration (a), neither Rs. 2 nor Re, 1- 12 is the prevailing rate, nor is Rs. 1-8 the prevailing rate,

because only 350 acres (exactly half) are held at Re. 1-8 or at rates higher than Re. 1.8. In this case Re. 1.4 is the prevailing rate, because more than half the lands are held at Re. 1.4 or higher rates, and this is the highest rate at which, and at rates higher than which, more than half the land is held.

### **38. Limit To Enhancement Of Prevailing Rate :-**

When the prevailing rate has once been determined by a Revenue Officer under Chapter XI or by a Revenue Court in any suit under this Act, it shall not be liable to enhancement save on the ground and to the extent specified in Section 35, Clause (b) and Section 39.

### **39. Rules As To Enhancement On Ground Of Rise In Prices :-**

Where an enhancement is claimed on the ground of a rise in prices -

(a) the Court shall compare the average prices during the decennial period immediately preceding the institution of the suit with the average prices during such other decennial period as it may appear-equitable and practicable to take for comparison;

(b) the enhanced rent shall bear to the previous rent the same proportion as the average prices during the last decennial period bear to the average prices during the previous decennial period taken for purposes of comparison:

Provided that in calculating this proportion, the average prices during the later period shall be reduced by one-third of their excess over the average prices during the earlier period;

(c) if, in the opinion of the Court, it is not practicable to take the decennial periods prescribed in Clause (a), the Court may, in its discretion, substitute any shorter periods therefore.

### **40. Rules As To Enhancement On Ground Of Landlords Improvement :-**

(1) Where an enhancement is claimed on the ground of a landlords improvement-

(a) the Court shall not grant an enhancement, unless the improvement has been registered in accordance with this Act;

(b) in determining the amount of enhancement, the Court shall have regard to -

- (i) the increase in the productive powers of the land caused or likely to be caused by the improvement;
  - (ii) the cost of the improvement;
  - (iii) the cost of the cultivation required for utilising the improvement, and
  - (iv) the existing rent, and the ability of the land to bear a higher rent.
- (2) A decree under this Section shall, on the application of the tenant or his successor-in-interest, be subject to re-consideration in the event of the improvement not producing or ceasing to produce the estimated effect.

#### **41. Rules As To Enhancement On Ground Of Increase In Productive Powers Due To Fluvial Action :-**

Where an enhancement is claimed on the ground of an increase in productive powers due to fluvial action-

- (a) the Court shall not take into account any increase which is merely temporary or casual;
- (b) the Court may enhance the rent to such an amount as it may deem fair and equitable, but not so as to give the landlord more than one-half of the value of the net increase in the produce of the land.

#### **42. Enhancement By Suit To Be Fair And Equitable :-**

Notwithstanding anything in the foregoing sections, the Court shall not in any case decree any enhancement which is under the circumstances of the case unfair or inequitable.

#### **43. Power To Order Progressive Enhancement :-**

If the Court passing a decree for enhancement considers that the immediate enforcement of the decree in its full extent will be attended with hardship to the raiyat, it 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 enhancement decree has been reached.

#### **44. Limitation Of Right To Bring Successive Enhancement Suits :-**

- (1) A suit instituted for the enhancement of the rent of a holding on the ground that the rate of rent paid is below the prevailing

rate, or on the ground of a rise in prices, shall not be entertained if within the fifteen years next preceding its institution the rent of the holding has been enhanced by a contract made after the tenth day of September, 1891, or if within the said period of fifteen years the rent has been commuted under Section 47 or a decree has been, passed under this Act or any enactment repealed by this Act enhancing the rent on either of the grounds aforesaid or on any ground corresponding thereto or dismissing the suit on the merits.

(2) Nothing in this Section shall affect the provisions of Rule 1 in Order XXIII in the first Schedule to the Code of Civil Procedure 1908 (V of 1908).

#### **45. Reduction Of Rent :-**

(1) An occupancy-raiyat holding at a money- rent may institute a suit for the reduction of his rent on the following grounds, and, except as hereinafter provided in the case of a diminution of the area of the holding, not otherwise, namely :

(a) on the ground that the soil of the holding has, without the fault of the raiyat, become permanently deteriorated by a deposit of and or other specific cause, sudden or gradual, or

(b) on the ground 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.

(2) In any suit instituted under this Section, the Court may direct such reduction of the rent as it thinks fair and equitable.

#### **46. Price-Lists Of Staple Food-Crops :-**

(1) The Collector of every district shall prepare, monthly or at shorter intervals, periodical lists of the market- prices of staple food-crops grown in such local areas as the State Government may direct, and shall submit them to the Board of Revenue for approval or revision.

(2) The Collector may, if so directed by the State Government prepare for any local area like price-lists relating to such past times as the State Government thinks fit, and shall submit the lists so prepared to the Board of Revenue for approval or revision.

(3) The Collector shall, one month before submitting a price list to the Board of Revenue under this section, publish in the prescribed manner within the local area to which it relates; and if any landlord or tenant of land within the local area, within the said period of one month, presents to him in writing any objection to the list, he shall

submit the same to the Board of Revenue with the list.

(4) The price-lists shall, when approved or revised by the Board of Revenue, be published in the official Gazette; and any manifest error in any such list discovered after its publication may be corrected by the Collector with the sanction of the Board of Revenue.

(5) The State Government shall cause to be compiled from the periodical lists prepared under this Section lists of the average prices prevailing throughout each year, and shall cause them to be published annually in the official Gazette.

(6) In any proceedings under this Chapter for an enhancement or reduction of rent on the ground of a rise or fall in prices, the Court shall refer to the lists published under this Section, and shall presume that the prices shown in the lists prepared for any year subsequent to the commencement of this Act are correct, and may presume that the prices shown in the lists prepared for any year prior to the commencement of this Act are correct, unless and until it is proved that they are incorrect.

(7) The State Government shall make rules for determining what are to be deemed staple food-crops in any local area, and for the guidance of officer preparing price-lists under this Section.

#### **47. Commutation Of Rent Payable In Kind :-**

(1) Where an occupancy raiyat pays for a holding rent in kind, or on the estimated value of a portion of the crop, 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 cash, either the raiyat or his landlord may apply to have the rent commuted to a money-rent.

(2) The application may be made to -

(i) the Collector or Sub-divisional Officer, or

(ii) a Revenue officer appointed by the State Government under the designation of Settlement Officer or Assistant Settlement Officer, for the purpose of making a survey and record-of-rights under Chapter XI, or

(iii) any other officer specially authorised in this behalf by the Board of Revenue.

(3) On the receipt of the application, the officer may determine the sum to be paid as money-rent, and may order that the raiyat shall, in lieu of paying his rent in kind or otherwise as aforesaid, pay the sum so determined.



- (4) In making the determination, the officer shall have regard to -
- (a) the average money-rent payable by occupancy-raiyats for land of a similar description and with similar advantages in the vicinity;
  - (b) the average value of rent actually received by the landlord during the preceding ten years or during any shorter period for which evidence may be available;
  - (c) 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;
  - (d) improvements effected by the landlord or by the occupancy raiyat in respect of the raiyats holding; and
  - (e) the rules laid down in Section 40 regarding enhancement of rent on the ground of a landlords improvement.
- (5) The order shall be in writing and shall state the ground on which it is made and the time from which it is to take effect.
- (6) If the application is opposed, the officer shall decide whether in all the circumstances of the case it is reasonable to grant it, and in cases in which-
- (i) the landlord is by physical or caste disability or on account of sex, unable to cultivate personally and is dependent for livelihood upon the share of the produce payable as rent, or
  - (ii) the land has been assigned to a religious or charitable endowment and the share of the produce payable as rent is applied for the purpose of such endowment;
- he shall, and in other cases he may, take into consideration the effect of commutation on the income of the landlord.
- (7) If the officer refuses the application he shall record in writing his reasons for the refusal.
- (8) All orders passed under this section, including an order refusing an application, shall be subject to appeal in the prescribed manner and to the prescribed officer.

#### **48. Period For Which Commuted Rents Are To Remain Unaltered :-**

- (1) Where the rent of a holding has been commuted under Section 47, it shall not, except on the ground of a landlords improvement or of a subsequent alteration of the area of the holding, be enhanced for fifteen years; nor shall it be reduced for fifteen years, save on the ground of alteration in the area of the holding, or on the ground specified in Clause (a) of Sub-section (1) of Section 45.
- (2) The said period of fifteen years shall be counted from the date

on which the order takes effect under Sub-section (5) of Section 47.

## **CHAPTER 6 NON-OCCUPANCY RAIYATS**

### **49. Application Of Chapter :-**

This Chapter shall apply to raiyats not having a right of occupancy, who are in this Act referred to as non-occupancy raiyats.

### **50. Initial Rent Of Non-Occupancy Raiyat :-**

When a non-occupancy raiyat is admitted to the occupation of land, he shall become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission.

### **51. Conditions Of Enhancement Of Rents :-**

The rent of a non-occupancy raiyat shall not be enhanced except by registered agreement or by agreement under Section 53 :

Provided that nothing in this Section shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

### **52. Grounds On Which Non-Occupancy Raiyat May Be Ejected :-**

A non- occupancy raiyat shall, 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;
- (b) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act and on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected;
- (c) 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;
- (d) on the ground that he has refused to agree to pay a fair and equitable rent determined under Section 53, or that the term for which he is entitled to hold at such a rent as has expired.

### **53. Conditions Of Ejectment On Ground Of Refusal To Agree**

## **To Enhancement :-**

(1) A suit for ejectment on the ground of refusal to agree to an enhancement of rent shall not be instituted against a non-occupancy raiyat unless the landlord has tendered to the raiyat an agreement to pay the enhanced rent, and the, raiyat has within three months before the institution of the suit refused to execute the agreement.

(2) A landlord desiring to tender an agreement to a raiyat under this Section may file it in the office of such Court or officer as the State Government appoints in this behalf, for service on the raiyat. The Court or officer shall forthwith cause it to be served on the raiyat in the prescribed manner; and, when it has been so served, it shall, for the purposes of this Section, be deemed to have been tendered.

(3) If a raiyat on whom an agreement has been served under Subsection (2) executes it, and within one month from the date of service files it in the office from which it is issued, it shall take effect from the commencement of the agricultural year next following.

(4) When an agreement has been executed and filed by a raiyat under Sub-section (3), the Court or officer in whose office it is so filed shall forthwith cause a notice of its being so executed and filed to be served on the landlord in the prescribed manner.

(5) If the raiyat does not execute the agreement and file it under Subsection (3), he shall be deemed for the purpose of this Section to have refused to execute it.

(6) 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 Court shall determine what rent is fair and equitable for the holding.

(7) 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 under the conditions mentioned in Section 52, unless he has acquired a right of occupancy.

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

(9) In determining what rent is fair and equitable, the Court shall have regard to the rents generally paid by the raiyats for and of a similar description and with like advantages in the same village.

(10) A decree for ejectment passed under this Section shall effect from the end of the agricultural year in which it is passed.

#### **54. Explanation Of Admitted To Occupation :-**

Where a raiyat has been in occupation of land, and a lease is executed with a view to continuance of his occupation, he is not to be deemed to be admitted to occupation by that lease for the purpose of this Chapter, notwithstanding that the lease may purport to admit him to occupation.

### **CHAPTER 7 LANDS EXEMPTED FROM CHAPTERS V AND VI**

#### **55. Bar To Acquisition Of Right Of Occupancy In And To Application Chapter Vi To, Proprietors Private Lands And Certain Other Lands :-**

Notwithstanding anything contained in Chapter V, a right of occupancy shall not be acquired in, nor shall anything contained in Chapter VI apply to -

- (a) a proprietors private lands, when they are held by a tenant on a lease for a term of years or on a lease from year to year;
- (b) land acquired under the Land Acquisition Act 1894 (I of 1894), for any Government or any Local Authority or Railway Company, or land belonging to the Government within a cantonment, while such land remains the property of the Government or of any Local Authority or Railway Company, or
- (c) land recorded or demarcated as belonging to the Government or to any Local Authority which is used for any public work, such as a road, canal or embankment, or is required for the repair or maintenance of the same, while such, land continues to be so used or required.

### **CHAPTER 8 UNDER-RAIYATS**

#### **56. Limit Of Rent Recoverable From Under-Raiyate :-**

The landlord of an under-raiyat holding at a money-rent shall not be entitled to recover rent exceeding the rent which he himself pays by more than the following percentage of the same, namely:

- (a) when the rent payable by the under-raiyat is payable under registered lease or agreement - fifty percent; and
- (b) in any other case - twenty - five per cent;

Provided that, if the landlord be a bazyaftidar, the said percentages

shall be calculated with reference to the average of cash rent which is paid by occupancy-raiyats for similar land in the village, and not with reference to the rent which the bazyaftidar himself pays.

### **57. Restriction On Ejectment Of Under-Raiyats :-**

An under-raiyati shall not be liable to be ejected by his landlord, except -

- (a) on the expiration of the term of a written lease; or
- (b) when holding otherwise than under a written lease, at the end of the agricultural year within which a notice to quit has been served upon him by his landlord; provided that such notice has been served upon him not less than six months before the end of the year.

## **CHAPTER 9 GENERAL PROVISIONS AS TO RENT**

### **58. Rules And Presumptions As To Fixity Of Rent :-**

(1) Where a tenure- holder or raiyat in a permanently settled area, and his predecessors-in- interest, have held at a rent or rate of rent which has not been changed from the time of the permanent settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alternation in the area of the tenure or holding.

(2) If it is proved in any suit or other proceeding under this Act or under any other law that either a tenure-holder or raiyat and his predecessors- in-interest have held land situated in a permanently settled area at a rent or rate of rent which has not been changed during the twenty years immediately before the institution of the suit or proceeding, it shall be presumed, until the contrary is shown, that they have held at that rent or rate of rent from, the time of the permanent settlement:

Provided that, if it is required by or under any enactment that in any local area tenancies, or any classes of tenancies, at fixed rents or rates or rent shall be registered as such on or before a date specified by or under the enactment, the foregoing presumption shall not after that date apply to any tenancy or, as the case may be, to any tenancy of that class, in that local area unless the tenancy has been so registered.

(3) The operation of this Section, so far as it relates to land held by a raiyat, shall not be affected by the fact of the land which formed with it a single holding, or amalgamated with other land into one

holding.

(4) Nothing in this Section shall apply to a tenure held for a term of years to determinable at the will of the landlord.

### **59. Presumption As To Amount Of Rent And Conditions Of Holding :-**

If a question arises as to the amount of a tenants rent or the conditions under which he holds in any agricultural year, he shall be presumed, until the contrary is shown, to hold at the same rent and under the same conditions as in the last preceding agricultural year.

### **60. Alteration Of Rent In Respect Of Alteration In Area :-**

(1) Every tenant shall -

- (a) be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him, unless it is proved that the excess is due to the addition to the tenure or holding of land which, having previously belonged to the tenure or holding, was lost by diluvion or otherwise without any reduction of the rent being made; and
- (b) be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area of his tenure or holding as compared with the area for which rent has been previously paid by him, unless it is proved that the deficiency is due to the loss of land which was added to the area of the tenure or holding by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

(2) In determining the area for which rent has been previously paid, the Court shall, if so required by any party to the suit, have regard to -

- (a) the origin and conditions of the tenancy, for instance, whether the rent was a consolidated rent for the entire tenure or holding;
- (b) whether the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise within the knowledge and consent of the landlord;
- (c) the length of time during which the tenancy has lasted without dispute as to rent or area; and
- (d) the length of the measure used or in local use at the time of the origin of the tenancy as compared with that used or in local use at the time of the institution of the suit.

(3) In determining the amount to be added to the rent, the Court

shall have regard to the rates payable by tenants of the same class for lands of a similar description and with similar advantages in the vicinity, and, in the case of a tenure-holder, to the profits to which he is entitled in respect of the rent of his tenure; and shall not in any case fix any rent which, in the circumstances of the case, is unfair or inequitable.

(4) The amount abated from the rent shall bear the same proportion to the rent previously payable as the diminution of the total yearly value of the tenure holding bears to the previous total yearly value thereof; or, in default of satisfactory proof of the yearly value of the land lost, shall bear to the rent previously payable the same proportion as the diminution of area bears to the previous area of the tenure or holding.

(5) When, in a suit under this section, the landlord or tenant is unable to indicate any particular land as held in excess, the rent to be added on account of the excess area may be calculated at the average rate of rent paid on all the lands of the holding, exclusive of such excess area.

(6) When, in a suit under this Section, the landlord or tenant proves that, at the time the measurement on which the claim is based was made, there existed, in respect of the estate of permanent tenure or part thereof in which the tenure of holding is situate, a practice of settlement being made after measurement of the land assessed with rent, it may be presumed that the area of the tenure or holding specified in any lease or counterpart engagement, or where there is an entry of area in a counterfoil receipt corresponding to the entry in the rentroll in relating to it, has been entered in such lease, counterpart engagement or rent-roll after measurement.

## **61. Reclamation Of Waste Land :-**

(1) No waste land may be reclaimed by a raiyat without the written consent of his landlord except where the land was, before such reclamation, included in the tenancy of the raiyat and he has acquired a right of occupancy in it.

(2) Where the consent of the landlord is required by Sub-section (1) for the reclamation of waste land, such consent shall be deemed to have been given if, within four years from the date on which the raiyat commenced his reclamation of the land, the landlord has not made an application to the Collector for his ejectment :

Provided that this Sub-section shall not apply to waste land which is not included in a village as defined in Clause (25) of Section 3.

(3) Waste land which has been reclaimed under Sub-section (1) or Sub-section (2) shall be assessable to rent according to the terms of any agreement entered into by the parties before or after the reclamation, in the absence of any such agreement, the Collector may, on the application of either of the parties, settle a fair and equitable rent for the land, and, in doing so, shall have regard to.

(i) the provisions of Section 60; and

(ii) any local usage or arrangement between the parties which is in his opinion fair and equitable.

## **62. Instalment Of Rent :-**

(1) Subject to agreement or established usage, a money-rent payable by a tenant shall be paid in two equal instalments falling due on the last day of each half of the agricultural year.

(2) Subject to agreement or established usage, a produce-rent payable by a tenant shall be payable at the time of harvest, and shall be deemed to have fallen due on the last day of the Oriya month during which the crop is harvested.

## **63. Time And Place For Payment Of Rent :-**

(1) Every tenant shall pay each instalment of rent before sunset of the day on which it falls due.

(2) The payment shall, except in cases where a tenant is allowed under this Act to deposit his rent, be made at the landlords village office, or at such other convenient place as may be appointed in that behalf by the landlord:

Provided that the State Government may make rules, either generally or for any specified area, authorising a tenant to pay his rent by postal money-order.

(3) Any instalment or part of an instalment of rent not duly paid at or before the time when it falls due shall be deemed an arrear.

## **64. Appropriation Of Payments :-**

(1) When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which- he wishes the payment to be credited, and the payment shall be credited accordingly.

(2) If he does not make any such declaration, the payment may be



credited to- the account of such year and instalment as the landlord thinks fit.

**65. Tenant Making Payment To His Landlord Entitled To A Receipt :-**

(1) Every tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord a written receipt for the amount paid by him, signed by the landlord.

(2) The landlord shall prepare and retain a counterfoil of the receipts.

(3) The receipt and counterfoil shall specify such of the several particulars shown in the form of receipt given in Schedule II as can be specified by the landlord at the time of payment :

Provided that the Board of Revenue may prescribe or sanction a modified form, either generally or for any particular local area or class of cases.

(4) If a receipt does not contain substantially the particulars required by this Section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent to the date of which the receipt was given.

**66. Tenant Entitled To Full Discharge Of Statement Of Account At Close Of Year :-**

(1) Where a landlord admits that all rent payable by a tenant to the end of the agricultural year has been paid, the tenant shall be entitled to receive from the landlord, free of charge, within three months after the end of the year, a receipt in full discharge of all rent falling due to the end of the year, signed by the landlord.

(2) Where the landlord does not so admit, the tenant shall be entitled, on paying a fee of four annas, to receive, within three months after the end of the year, a statement of account specifying the several particulars shown in the form of account given in Schedule II or in such other form as may be prescribed by the Board of Revenue, either generally or for any particular local area or class of cases.

(3) The landlord shall prepare and retain a copy of the statement containing similar particulars.

**67. Penalties And Fine For Withholding Receipts And Statements Of Account And Failing To Keep Counterparts :-**

(1) If a landlord, without reasonable cause, refuses or neglects to deliver to a tenant a receipt, containing the particulars prescribed by Section 65, for any rent paid by the tenant, the tenant may, within three months from the date of payment, institute a suit to recover from him such penalty, not exceeding the amount or value of that rent, as the Court thinks fit.

(2) If a landlord, without reasonable cause, refuses or neglects to deliver to a tenant demanding the same either the receipt in full discharge or, if the tenant is not entitled to such a receipt, the statement of account for any year prescribed in Section 66, the tenant may, within the next ensuing agricultural year, institute a suit to recover from him such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by the tenant to the landlord during the year for which the receipt or account should have been delivered.

(3) If a landlord or his agent, without reasonable cause, fails to deliver to the tenant a receipt or statement, or to prepare and retain a counterfoil or copy of a receipt or statement, as required by either of the said sections, such landlord or agent, as the case may be, shall be liable to fine not exceeding fifty rupees, to be imposed, after summary inquiry, by the Collector.

(4) The Collector may hold a summary inquiry under Sub-section (3) either on his own motion or on information received from a Revenue Officer within one year, or upon complaint of the party aggrieved made within three months from the date of failure, or upon the report of a Civil or Revenue Court made as provided in Sub-section (6).

(5) Nothing in Sub-sections (3) and (4) shall apply if the tenant has already instituted a suit under Sub-section (1) or Sub-section (2).

(6) If, in any suit or other proceeding under this Act or under any other law, the Court or presiding officer (not being the Collector) finds that any landlord or agent has failed -

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

(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 Collector.

(7) Where, in any case instituted under Sub-section (1), the Collector discharges any landlord or agent, and is satisfied that the complaint of the tenant on which the proceedings were instituted is false or vexatious, the Collector may, in his discretion, by his order of discharge, direct the tenant to pay such landlord or agent, such

compensation, not exceeding fifty rupees, as the Collector thinks fit.

(8) An appeal shall lie to the Collector of the district from any order passed under Sub-section (3) or Sub-section (7), by an officer subordinate to him, and his order on appeal shall, subject to any order which may be passed by the Commissioner on revision, be final :

Provided that an appeal shall lie to the Commissioner from any order passed by the Collector of the district under Sub-section (3) or Sub-section (7), and the order of the Commissioner on appeal, shall be final.

(9) Any fine imposed or compensation awarded under this Section may be recovered in the manner provided by any law for the time being in force for the recovery of a public demand.

(10) For the purpose of an inquiry under this Section, the Collector 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 (V of 1908).

#### **68. State Government To Prepare Forms Of Receipt And Account :-**

(1) The State Government shall cause to be prepared and kept for sale to landlords at all sub-divisional offices forms of receipts, with counterfoils, and of statements of account, suitable for use under the foregoing sections.

(2) The forms may be sold in books with the leaves consecutively numbered or otherwise as the State Government thinks fit.

#### **69. Effect Of Receipt By Registered Proprietor, Manager, Mortgagee, Sub-Proprietor Or Tenure-Holder :-**

Where rent is due to the proprietor, manager, or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876 (Ben. Act VII of 1876) as proprietor, manager or mortgagee of that estate;

and where rent is due to a Sub-proprietor or tenure-holder, the receipt of the person who is -

(a) registered under Sections 14, 15 or 16, or under any law previously in force, as sub-proprietor or tenure-holder; or

(b) recorded as sub-proprietor or tenure-holder in a record-of-rights finally published under Chapter XI or under some other law for the

time being in force.

or the receipt of the duly authorised agent of any such person as aforesaid,

shall be a sufficient discharge for the rent; and the person liable for the rent shall not be entitled to plead in defence to a claim by the person so registered or recorded that the rent is due to any third person.

But nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee or the registered or recorded sub-proprietor or tenure-holder.

## **70. Application To Deposit Rent In Court :-**

(1) In any of the following cases, namely :

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

(b) when a tenant 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 person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it;

(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 their behalf; or

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

the tenant may present, to the Court having jurisdiction to entertain a suit for the rent of his tenure or holding, an application in writing for permission to deposit in the Court the full amount of the money then due.

(2) The application shall contain a statement of the grounds, on which it is made; and shall state -

in cases (a) and (b), the name of the person to whose credit the deposit is to be entered;

in case (c), the names of the shares to whom the rent is due, or of so many of them as the tenant may be able to specify; and

in case (d), the name of the person to whom the rent was last paid, and of the person or persons now claiming it;

shall be signed and verified, in the manner provided in Rules 14 and 15 in Order VI in the first Schedule to the Code of Civil

Procedure, 1908 (V of 1908) by the tenant, or, where he is not personally cognizant of the facts of the case, by some person so cognizant;

and shall be accompanied by a fee of such amount as the State Government may, by rule, direct.

(3) The provisions of this Section shall not apply to a rent which has not fallen due prior to the date of application for deposit, not to a tenant who has acquired his tenancy by gift, purchase or exchange, and has not been duly registered under the provisions of Section 15 or 16.

### **71. Receipt Granted By Court For Rent Deposited To Be A Valid Acquittance :-**

(1) If it appears to the Court to which an application is made under Section 70 that the applicant is entitled under that Section to deposit the rent, it shall receive the rent and give a receipt for it in the prescribed form.

(2) A receipt given under this Section shall operate as an acquittance for the amount of the rent payable by the tenant and deposited as aforesaid, in the same manner and to the same extent as if that amount of rent had been received -

in cases (a) and (b) of Section 70, by the person specified in the application as the person to whose credit the deposit was to be entered;

in case(c) of that Section, by the co-sharers to whom the rent is due; and

in case (d) of that Section, by the person entitled to the rent.

### **72. Notification Of Receipt Of Deposit :-**

(1) The Court receiving the deposit shall forthwith -

in cases (a) and (b) of Section 70, cause a notice of the receipt of the deposit to be served, free of charge, on the person specified in the application as the person to whose credit the deposit was to be entered;

in case (c) of that Section, cause a notice of the receipt of the deposit to be posted at the landlords village-office or in some conspicuous place in the village in which the holding is situate; and

in case (d) of that Section, cause a like notice to be served free of charge, on every person, who it has reason to believe claims or is entitled to the deposit.

(2) Notices to be served under this Section may, at the discretion

of the Court, be served by registered post.

### **73. Payment Or Refund Of Deposit :-**

(1) The Court may pay the amount of the deposit to any person appearing to it to be entitled to the same, or may, if it thinks fit, retain the amount pending the decision of a Revenue Court as to the person so entitled.

(2) The payment may, if the State Government so directs be made by postal money-order.

(3) If no payment is made under this Section before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Revenue Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the Court with which the rent was deposited.

(4) No suit or other proceeding shall be instituted against the Government or against any officer of the Government, in respect of anything done by a Court receiving a deposit under the foregoing Sections;

But nothing in this Section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this Section.

### **74. Liability To Sale For Arrears In Case Of Permanent Tenure-Holder, Bazyaftidar, Raiyat Holding At Fixed Rate, Chandnadar Or Occupancy Raiyat :-**

Where a tenant is a permanent tenure-holder, a bazyaftidar, a raiyat holding at fixed rates, a chandnadar or an occupancy-raiyat, he shall not be liable to ejectment for arrears of rent, but his tenure of holding shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.

### **75. Ejectment For Arrears In Other Cases :-**

(1) When an arrear of rent remains due at the end of the agricultural year from a tenant not being a permanent tenure-holder, bazyaftidar, a raiyat holding at fixed rates, a chandnadar or an occupancy-raiyat, the landlord may, whether he has obtained a decree for the recovery of the arrear or not, and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant.

(2) In a suit for ejectment for an arrear of rent, a decree passed in favour of the Plaintiff shall specify the amount of the arrear and of the interest (if any) due thereon; and the decree shall not be executed if that amount and the costs of the suit are paid into Court within fifteen days from the date of the decree, or when the Court is closed on the fifteenth day on the day upon which the Court re-opens.

(3) The Court may, for special reasons, extend the period of fifteen days mentioned in this Section.

#### **76. Interest On Arrears Of Money-Rent :-**

An arrear of money rent shall bear simple interest at the rate of six per centum per annum, from the expiration of that half of the agricultural year in which the instalment falls due to the date of payment or of the institution of the suit, whichever date is earlier.

#### **77. Power To Award Damages On Rent Withheld Without Reasonable Cause, Or To Defendant Improperly Sued For Rent :-**

(1) If, in any suit brought for the recovery of arrears of rent it appears to the Court that the Defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the Plaintiff, in addition the amount decreed for rent and costs, such damages, not exceeding twenty-five per centum on the amount of rent decreed, as it thinks fit:

Provided that -

(i) interest shall not be decreed when damages are awarded under this Section; and

(ii) the amount of damages awarded shall in no case be less than the amount of interest recoverable under Section 76.

(2) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the Plaintiff has instituted the suit without reasonable or probable cause, the Court may award to the Defendant, by way of damages, such sum, not exceeding twenty-five per centum on the whole amount claimed by the Plaintiff, as it thinks fit.

#### **78. Recovery Of Produce Rent :-**

(1) Where the rent of any land is paid in kind, or on the estimated

value of a portion of the crop, 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 cash, the landlord shall not be entitled to recover rent for that land in excess of half the gross produce of the land, or the value thereof, or any interest on such rent, or to recover any arrear of such rent by suit, unless such suit is instituted before the end of the agricultural year next following that for which the rent is claimed to be due.

Explanation - In applying the provisions of this Sub-section, the Court shall estimate the value of the produce according to the rates obtaining locally at the time of harvest.

(2) Nothing in this Section shall bar a suit for an arrear of rent recoverable under the law hitherto in force; provided that such suit shall be brought before the end of the first agricultural year after the commencement of this Act.

### **79. Order For Appraising Or Dividing Produce :-**

(1) Where rent is taken by appraisement or division of the produce or is a fixed quantity of the produce

(a) if either the landlord or the tenant neglects to attend, either personally or by agent, at the proper time for making the appraisement or division, or

(b) if there is dispute about the quantity, value or division of the produce,

the Collector may, on the application of either party, and on his depositing such sum on account of expenses as the Collector may require, make an order appointing such officer as he thinks fit to appraise or divide the produce.

(2) The Collector may, without such an application, make the like order in any case where, in the opinion of the District or Sub-divisional Magistrate, the making of the order would be likely to prevent a breach of the peace.

(3) Where a Collector makes an order under this Section, he may, by order, prohibit the removal of the produce until the appraisement or division has been effected; but an order made by the Collector under this Sub-section shall not prevent the execution of any order passed by the Court for the distraint of the tenants crops.

(4) Every officer appointed by the Collector under Sub-section (1) to appraise or divide the produce shall, for the purposes of the Indian Penal Code, 1860 (45 of 1860) be deemed to be a public



servant.

### **80. Procedure Where Officer Appointed :-**

(1) When a Collector appoints an officer under Section 79 the Collector may, in his discretion, direct the officer to associate with himself any other persons as assessors, and may give him instructions regarding the number, qualifications and mode of selection of those assessors (if any), and the procedure to be followed in making the appraisement or division; and the officer shall conform to the instructions so given.

(2) The officer shall, before making an appraisement or division, give notice to the landlord and tenant of the time and place at which the appraisement or division will be made; but if either the landlord or the tenant fails to attend/either personally or by agent, he may proceed ex parte.

(3) When the officer has made the appraisement or division, he shall submit a report of his proceedings to the Collector.

(4) The Collector shall consider the report, and after giving the party an opportunity of being heard, and making such inquiry (if any) as he may think necessary, shall pass such order thereon as he thinks just.

(5) The Collector may, if he thinks fit, refer any question in dispute between the parties for the decision of a Revenue Court; but, subject as aforesaid, his order shall be final and shall, on application to a Revenue Court by the landlord or the tenant, be enforceable as a decree.

(6) Where the Officer makes an appraisement, the appraisement papers shall be filed in the Collectors office.

### **81. Rights And Liabilities As To Possession Of Crop :-**

(1) Where rent is taken by appraisement of the produce, the tenant shall be entitled to the exclusive possession of the produce.

(2) Where rent is taken by division of the produce, the tenant shall be entitled to the exclusive possession of the whole produce until it is divided, but shall not be entitled to remove any portion of the produce from the threshing floor at such a time or in such a manner as to prevent the due division thereof at the proper time.

(3) In either case the tenant shall be entitled to cut and harvest the produce in due course of husbandry without any interference on the part of the landlord.

(4) If the tenant removes any portion of the produce at such a time

or in such a manner as to prevent the due appraisal of division thereof at the proper time, the produce shall be deemed to have been as full as the fullest crop of the same description appraised in the neighbourhood on similar land for that harvest.

**82. 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 for rent which became due after the transfer and was paid in good faith to the landlord whose interest was so transferred, unless the transferee has, before the payment, given notice of the transfer to the tenant.

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

**83. Liability For Arrears Of Rent On Transfer :-**

When an occupancy holding or a portion or share, thereof is transferred and arrears of rent have accrued thereon prior to the date of the transfer, the transferor and the transferee shall be jointly and severally liable to the landlord for such arrears of rent which shall be a first charge on the holding.

**84. Illegal Exactions :-**

All impositions upon a tenant, in addition to or in excess of the rent lawfully payable shall be illegal and all stipulations and reservations for the payment thereof shall be valid.

**85. Penalty :-**

(1) If any landlord or his agent levies from a tenant anything in money or kind in addition to or in excess of the rent or interest lawfully payable, the Collector of the district or any Deputy Collector who may be specially empowered by the State Government in this behalf may, if he is so satisfied, by order impose on the landlord or on his agent or on both, as the case may be, such penalty as such officer thinks fit, not exceeding five hundred rupees, or when double the amount or value of what is so levied exceeds five hundred rupees, not exceeding double that

amount or value or simple imprisonment for a period not exceeding six months in their case.

Such officer may proceed against the landlord and his agent in the same proceeding or in separate proceedings, and shall award to the tenant, by way of compensation and cost, such portion of the penalty as he thinks fit.

(2) If in any suit, application or proceeding under this Act or any other law, the Court or presiding officer has grounds for believing that any landlord is liable to a penalty under this Section, such Court or officer shall inform the Collector.

(3) A proceeding under Sub-section (1) shall be instituted -

(a) upon complaint made by a tenant, or

(b) after the receipt by the Collector of information under Sub-section (2) or on the termination of any suit, application or proceedings under this Act or any other law In the course of which the Collector has grounds for believing that the landlord is liable to a penalty under this Section:

Provided that all proceedings under this section shall be compoundable.

(4) If in any proceedings instituted under this Section, the Collector discharges any landlord or his agent, and is satisfied that the complaint or allegation of the tenant on which the proceedings were instituted is false or vexatious, the Collector may in his discretion, by his order of discharge, direct the tenant to pay to the landlord such compensation not exceeding one hundred rupees as the Collector may think fit.

Any fine imposed or compensation awarded under this Section may be recovered in the manner provided by any law for the time being in force for the recovery of a public demand.

## **CHAPTER 10 MISCELLANEOUS PROVISIONS TO LANDLORD AND TENANTS IMPROVEMENTS**

### **86. Definition Of "Improvement" :-**

(1) For the purposes of this Act, the term "improvement, used with reference to a raiyats holding, shall mean any work which adds to the value of the holding, which is suitable to the holding and consistent with the purposes for which it was let, and which, if not executed on the holding, is either executed directly for its benefit or is, after execution, made directly beneficial to it.

(2) Until the Contrary is shown, the following shall be presumed to be improvement within the meaning of this Section:

- (a) the construction of wells, tanks, water-channels and other works for the storage, supply or distribution of water for the purposes of agriculture, or for the use of men and cattle employed in agriculture;
  - (b) the preparation of land for irrigation;
  - (c) the drainage, reclamation from rivers or other water, or protection from floods, or from erosion or other damage by water, of. land used for agricultural purposes, or wasteland which is cultivable;
  - (d) the reclamation, clearance, enclosure or permanent improvement of land, for agricultural purposes;
  - (e) the renewal or re-construction of any of the foregoing works, or alterations therein or additions thereto; and
  - (f) the erection of a suitable dwelling-house for the raiyat and his family, together with all necessary out-offices.
- (3) But no work executed by the raiyat of a holding shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of his landlord's property;

**87. Right To Make Improvements In Case Of Holding At Fixed Rates Or Occupancy Holding :-**

- (1) Where a raiyat holds at fixed rates or has an occupancy right in his holding, neither the raiyat nor his landlord, shall as such, be entitled to prevent the other from making an improvement in respect of the holding, except on the ground that he is willing to make it himself.
- (2) If both the raiyat and his landlord wish to make the same improvement, the raiyat shall have the prior right to make it unless it affects another holding or other holdings under the same landlord.

**88. Collector To Decide Question As To Right To Make Improvement, Etc. :-**

If a question arises between the raiyat and his landlord -

- (a) as to the right to make an improvement, or
  - (b) as to whether a particular work is an improvement.
- the Collector may, on the application of either party, decide the question; and his decision shall be final.

**89. Right To Make Improvements In Case Of Non-Occupancy Holding :-**

(1) A non-occupancy raiyat shall be entitled to construct, maintain and repair a well for the irrigation of his holding, with all works incidental thereof, and to erect a suitable dwelling-house for himself and his family, with all necessary out-offices; but shall not, except as aforesaid and as next hereinafter provided, be entitled to make any other improvement in respect of his holding without his landlords permission in writing.

(2) A non-occupancy-raiyat who would but for the want of his landlords permission in writing, be entitled to make an improvement in respect of his holding, may, if he desires that the improvement be made, deliver, or cause to be delivered, to his landlord a request in writing calling upon him to make the improvement within a reasonable time; and, if the landlord is unable or neglects to comply with that request, may make the improvement himself.

#### **90. Registration Of Landlords Improvements :-**

(1) A landlord may, by application to such Revenue Officer as the Board of Revenue may appoint, register any improvement which he has lawfully made, or which has been lawfully made at his expense, or which he has assisted a tenant in making.

(2) The application shall be in such form, shall contain such information, and shall be verified in such manner, by local inquiry or otherwise, as the State Government may, by rule, direct.

(3) The officer receiving the application may reject it if it has not been made within twelve months -

(a) in the case of improvements made before the commencement of this Act - from the commencement of this Act;

(b) in the case of improvements made after the commencement of this Act - from the date of the completion of the work;

#### **91. Application To Record Evidence As To Improvement :-**

(1) If any landlord or tenant of a holding desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to a Revenue Officer, who shall thereupon, at a time and place of which notice shall be given to the parties, record the evidence, unless he considers that there are no reasonable grounds for making the application, or it is made to appear that the subject-matter thereof is under inquiry in a Revenue Court.

(2) When any matter has been recorded under this Section, the

record thereof Shall be admissible in evidence in every subsequent proceeding between the landlord and tenant or any persons claiming under them.

## **92. Compensation For Raiyats Improvements :-**

(1) Every raiyat who is ejected from his holding shall be entitled to compensation for improvements which have been made in respect thereof in accordance with this Act by him, or by his predecessor in interest, and for which compensation has not already been paid.

(2) Whenever a Court makes a decree or order for the ejectment of a raiyat, it shall determine the amount of compensation (if any) due under this Section to the raiyat for improvements, and shall make the decree or order of ejectment conditional on the payment of that amount to the raiyat.

(3) No compensation under this section for an improvement shall be claimable where raiyat has made the improvement in pursuance of a contract or under a lease binding him, in consideration of some substantial advantage to be obtained by him, to make the improvement without compensation, and he has obtained that advantage.

(4) Improvements made by a raiyat between the twenty-seventh day of June, 1892 and the commencement of this Act shall be deemed to have been made in accordance with this Act.

(5) The State Government may, by notification in the official Gazette, make rules requiring the Court to associate with itself, for the purpose of estimating the compensation to be awarded under this Section for an improvement, such number of assessors as the State Government thinks fit, and determining the qualifications of those assessors and the mode of selecting them.

## **93. Principles On Which Compensation Is To Be Estimated :-**

(1) In estimating the compensation to be awarded under Section 92 for an improvement, regard shall be had -

(a) to the amount by which the value, or the produce, of the holding or the value of that produce, is increased by the improvement;

(b) to the condition of the improvement, and the probable duration of its effects;

(c) to the labour and capital required for the making of such an improvement;

(d) to any reduction or remission of rent or any other advantage given by the landlord to the raiyat in consideration of the improvement; and

(e) in the case of a reclamation or of the conversion of unirrigated into irrigated land, to the length of time during which the benefit of the improvement at an unenhanced rent.

(2) When the amount of the compensation has been assessed the Court may, if the landlord and raiyat agree, direct that instead of being paid wholly in money, it shall be made wholly or partly in some other way.

#### **94. Acquisition Of Land For Building And Other Purposes :-**

(1) The Collector may, on the application of the landlord of a holding, and on being satisfied that he is desirous of acquiring the holding or 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 a village road, tank for drinking-water or embankment, or for any charitable, religious or educational purpose, or for the purpose of mining, manufacture, drainage or irrigation, or as building ground for any such purpose, or for access to land used or required for any such purpose, authorise the acquisition thereof by the landlord upon such conditions as the Collector 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 Collector, including full compensation to the tenant.

(2) If the landlord tenders to the tenant such sum as the Collector has approved under Sub-section (1) as payment for any land, and the tenant refuses to receive the same, the Collector may, on the landlord depositing the said sum with the Collector, give possession of the land to the landlord in the prescribed manner.

#### **95. Power Of Collector To Acquire Land For Communal Purposes :-**

(1) When the Collector is satisfied that no communal land is set for the common use of the villagers or for the supply of fuel to them or that any land so set apart or used is inadequate for the purpose, he may, after giving notice to the landlord and any other persons affected thereby and after making such enquiry as he thinks fit, determine the land or additional land needed for the purpose and apply to the State Government for the acquisition of such land

under the Land Acquisition Act, 1894 (I of 1894). On such application, the State Government may pass an order directing the Collector to take order for acquisition of such land under the said Act. Thereupon the provisions of that Act shall apply as if the State Government had directed the Collector to take order for the acquisition of such land under Section 7 of the said Act and the land shall, after such acquisition, be set for the purpose for which it is acquired.

(2) The cost of such acquisition including all charges incidental thereto, shall be borne by the State Government, any local authority or authorities having jurisdiction over the area in which the land is situated, the landlord and the raiyats or other persons benefited thereby in such proportions as the Collector may fix. If a local authority, landlord, raiyat or other person makes default in paying its or his share, if any, of such, cost, the Collector may recover such share-

(i) in the case of local authority in such manner as may be prescribed; and

(ii) in the case of a landlord, raiyat or other person, in the same manner as an arrear of land revenue.

(3) Subject to such rules as the State Government may prescribe in this behalf, the share, if any, of such cost payable by a raiyat under this Section together with interest thereon at six per cent per annum may, at the discretion of the Collector, take the form of annual payments, the amount of such payments being fixed with due regard to the prevailing rents.

Explanation - The expression communal land means land recpitjed as Gochar, Rakshit, or Sarbasadharan, in the record-of-rights or waste land which is either expressly or implidely set apart for the common use of or for the supply of fuel to the villagers whether recorded as such in the record-of- rights or not.

## **96. Section 96 :-**

Omitted

## **97. Surrender :-**

(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.

(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 three months before he surrenders, notice in writing of his intention to surrender.

(3) When a raiyat has surrendered his holding, the Court shall in the following cases, for the purposes of Sub-section (2), presume, until the contrary is shown, that such notice was so given, namely :

(a) if the raiyat takes a new holding in the same village from the same landlord during the agricultural year next following the surrender;

(b) If the raiyat ceases, at least three months before the end of the agricultural year at the end of which the surrender is made, to reside in the village in which the surrendered holding is situate.

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

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

(6) When a holding is subject to an encumbrance secured by a registered instrument, the surrender of the holding shall not be valid unless the landlord is informed of the encumbrance, and the surrender is made with the consent, in writing, of the landlord and the encumbrancer.

(7) Save as provided in Sub-section (6), 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 holding.

## **98. Abandonment :-**

(1) If a non-resident or a resident raiyat who voluntarily abandons his residence in the village, ceases to cultivate his holding either by himself or some other person, without giving notice to his landlord and without arranging for payment of his rent as it falls due, the landlord may, at any time after the expiration of the agricultural year in which the raiyat thus ceases to cultivate, enter on the holding and let it to another tenant, or take it into cultivation himself.

(2) Before a landlord enters under this Section, he shall file a notice in the prescribed form in the Collectors office stating, that he has treated the holding as abandoned and is about to enter on it accordingly; and the Collector shall cause a notice to be published in such manner as the State Government may, by Rule, direct.

(3) When a landlord enters under this Section, the raiyat shall be entitled to institute a suit for recovery of possession of the land at any time not later than the expiration of two years, or, in the case of a non-occupancy raiyat six months from the date of the publication of the notice; and thereupon the Court may, on being satisfied that the raiyat did not voluntarily abandon his holding, order recovery of possession on such terms (if any) with respect to compensation to, persons injured and payment of rent as to the Court may seem just.

(4) When the whole or part of a holding has been sub-let by a registered instrument, the landlord shall, before entering under this Section, on the holding, offer the whole holding to the sub-lessee for the remainder of the term of sub-lease as the rent paid by the raiyat who has ceased to cultivate the holding, and on condition of the sublessee paying up all arrears due from that raiyat. If the sublessee refuses or neglects within a reasonable time to accept the offer, the landlord may avoid the sub-lease and may enter on the holding and let it to another tenant or cultivate it himself as provided in Sub-sections (1) and (2).

### **99. Division Of Tenancy Not Binding On Landlord Without His Consent :-**

(1) Save as provided in Sections 18, 31 and 31A and otherwise provided in the next two succeeding Sub-sections a division of tenure or holding or distribution of rent payable in respect thereof, shall not be binding on the landlord unless it is made with his express consent in writing or with that of his agent duly authorised in that behalf :

Provided that if it is proved that in any landlords rent roll there is an entry showing that any tenure or holding has been divided, or that the rent payable in respect thereof has been distributed, such landlord may be presumed to have given his express consent in writing to such division or distribution.

(2) Where there is division of tenure or holding and distribution of rent payable in respect thereof, whether such division took place before or after the coming into force of the Orissa Tenancy (Amendment) Act, 1947, and the portion of the tenure or holding so divided is defined by metes on a bounds, such division shall not require the express consent provided in Sub-section (1) and the landlord shall, on receiving notice of such division and distribution of rent be deemed to recognise the division of tenure or holding

and distribution of rent agreed upon by the co-sharer tenants.

(3) (a) The landlord may, within six months of the date of the receipt of notice of the division of tenure or holding and distribution of rent referred to in Sub-section (2), make an application to the Collector for a just and equitable distribution of rent of such tenure or holding. The Collector shall, on making such enquiry as he deems fit, order a distribution of rent, of such tenure or holding which is fair and equitable.

(b) If the co-sharer tenants fail to arrive at an agreement in respect of the distribution of rent though there may be division of tenure or holding by metes and bounds, the Collector shall, on the application of one or more co-sharer tenants, distribute the rent of such tenure or holding.

(c) An order passed by the Collector under Clause (a) or Clause (b) of this Sub-section shall be deemed to have divided the tenure or holding, as the case may be, with the express consent of the landlord as required by Sub-section (1).

(4) The distribution of rent of the tenure or holding by the Collector shall be made in accordance with the rules prescribed by the State Government.

Explanation - For the purpose of this Section, a tenure or holding shall be deemed to be divided by metes and bounds, if there is separate possession of portion of such tenure or holding by tenant.

### **100. No Ejectment Except In Execution Of Decree :-**

No tenant shall be ejected from his tenure or holding except in execution of a decree.

### **101. Landlords Right To Measure Land :-**

(1) Subject to the provisions of this section and any contract, a landlord may, by himself or by any person authorised by him in this behalf, enter on and measure all land comprised in his estate or tenure.

(2) A landlord shall not, without the consent of the tenant or the written permission of the Collector, be entitled to measure land more than once in ten years, except in the following cases, namely :

(a) where the area of the tenure or holding is liable, by reason of allusion, diluvion or reclamation to vary from year to year, and the rent payable depends on the area;

(b) where the area under cultivation is liable to vary from year to

year and the rent payable depends on the area under cultivation;  
(c) where the landlord is a purchaser otherwise than by voluntary transfer and not more than two years have elapsed since the date of his entry under the purchase.  
(3) The ten years shall be computed from the date of the last measurement, whether made before or after the commencement of this Act.

**102. Power Of Court To Order Tenant To Attend And Point Out Boundaries :-**

(1) Where a landlord desires to measure any land which he is entitled to measure under Section 101, the Revenue Court may, on the application of the landlord, make an order requiring the tenant to attend and point out this boundaries of the land.  
(2) If the tenant refuses or neglects to comply with the order, a 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, it shall be presumed to be correct until the contrary is shown.

**103. Standard Of Measurement :-**

(1) Every measurement of land made by order of a Revenue Court or of a Revenue Officer in any suit or proceeding under this Act shall be made by the acre, unless the Court or Revenue Officer directs that it be made by any other specified standard.  
(2) If the rights of the parties are regulated by any local measure other than the acre, the acre shall be converted into the local measure for the purposes of the suit or proceeding.  
(3) The State Government may, after local inquiry, make rules declaring for any local area the standard or standards of measurement locally in use in that area; and every declaration so made shall be presumed to be correct until the contrary is shown.

**104. Power To Call Upon Co-Owners To A Show Cause Why They Should Not Appoint A Common Manager :-**

When any dispute exists between co-owners of an estate, sub-proprietary interest or tenure as to the management thereof, and in consequence there has ensued, or is likely to ensue-

- (a) inconvenience to the public, or
- (b) injury to private rights,

the District judge may, on the application in case (a) of the Collector and in case (b) of any person having an interest in the estate, sub-proprietary interest or tenure, direct a notice to be served on all the co-owners, calling on them to show cause why they should not appoint a common manager:

Provided that a co-owner of an estate, sub-proprietary interest or tenure shall not be entitled to apply under this Section unless he is actually in possession of the interest he claims, and, if he is a co-owner of an estate, unless his name and the extent of his Interest are registered under the Land Registration Act, 1876 (Ben. Act VII of 1876) and if he is a co-owner of a sub-proprietary interest or tenure, unless he is registered or recorded in the manner indicated in Clause (a) or Clause (b) of Section 69.

**105. Power To Order Them To Appoint A Manager If Cause Is Not Shown :-**

If the co-owners fail to show cause as aforesaid within one month after service of a notice under Section 104, the District Judge may make an order directing them to appoint a common manager; and a copy of the order shall be served on any co-owner who did not appear before it was made.

**106. Power To Appoint Manager If Order Is Not Obeyed :-**

If the co-owners do not, within such period not being less than one month after the making of an order under Section 105 as the District Judge may fix in this behalf, or where the order has been served as directed by that Section within a like period after such service, appoint a common manager and report the appointment for the information of the District Judge, the District Judge may, unless it is shown to his satisfaction that there is a prospect of a satisfactory arrangement being made within a reasonable time, -

(a) direct that the estate, sub-proprietary interest or tenure be managed by the Court of Wards, in any case in which the Court of Wards consents to undertake the management thereof; or

(b) in any case appoint a manager.

**107. Power To Nominate Person To Act In All Cases Under Clause (B) Of Last Section :-**

The State Government may nominate a person for any local area to manage all estates, sub-proprietary interests and tenures within

that local area for which it may be necessary to, appoint as manager under Clause (b) of Section 106; and, when any person has been so nominated, no other person shall be appointed manager under that clause by the District Judge unless in the case of any estate the District Judge thinks fit to appoint one of the co-owners themselves as manager.

**108. Application Of The Court Of Wards Act, 1879 To Management By Court Of Wards :-**

In any case in which the Court of Wards undertakes under Section 106, the management of an estate, sub-proprietary interest or tenure, so much of the provisions of the Court of Wards Act, 1879 (Ben. Act IX of 1879) as relates to the management of immovable property shall apply to the management.

**109. Provisions Applicable To Manager And Co-Owner :-**

(1) A manager appointed under Section 106 may, if the District Judge thinks fit. be remunerated by a fixed salary or a fixed percentage of the money collected by him as manager, or partly in one way and partly in the other, as the District Judge from time to time directs.

(2) He shall give such security for the proper discharge of his duties as the District Judge directs.

(3) He shall, subject to the control of the District Judge have, for the purposes of management, the same powers as the co-owners jointly might, but for his appointment, have exercised and the co-owners shall not exercise any such power.

(4) He shall deal with and distribute the profits in accordance with the orders of the District Judge.

(5) He shall keep regular accounts, and allow the co-owners or any of them to inspect and take copies of those accounts.

(6) He shall pass his accounts at such period and in such form as the District Judge may direct.

(7) He may make any application which the proprietors could make under Section 115 or under Section 211.

(8) He shall be removable by the order of the District Judge and not otherwise.

(9) When the office of manager falls vacant in any manner, the District Judge may, subject to the provisions of Section 107, appoint another manager in his place; and the foregoing provisions of this Section shall apply to any manager so appointed.

## **110. Power To Restore Management To Co-Owners :-**

When an estate, sub-proprietary interest or tenure has been placed under the management of the Court of Wards, or a manager has been appointed for the same under Section 106 or Section 109, Sub-section (9), the District Judge may at any time direct that the management of it be restored to the co-owners, if he is satisfied that the management will be conducted by them without inconvenience to the public or injury to private rights.

## **111. Power To Make Rules :-**

The High Court may make rules defining the powers and duties of managers under this Chapter.

## **CHAPTER 11 RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS**

## **112. Power To Order Survey And Preparation Of Record-Of-Rights :-**

### **PART-I**

#### **Record-of-rights**

(1) The State Government may in any case if it thinks fit, 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) In particular and without prejudice to the generality of the foregoing power, the State Government may make such an order in the following cases, namely :

(a) where -

(i) the landlord or tenants, or

(ii) a proportion of not less than one-half of the total number of landlords, or

(iii) a landlord, of a proportion of the landlords, whose interest, or the aggregate of whose interests respectively, in the lands of the local area, estate or tenure or part thereof is not less than one-half of the total shares of all the landlords therein, or

(iv) a proportion of not less than one-fourth of the total number of tenants.

applies, or apply for such an order, depositing, or giving security for such amount for the payment of expenses as the State Government directs;

(b) where the preparation of such a record is calculated to settle or

avert a serious dispute existing or likely to arise between the tenants and their landlords generally;

(c) where the local area, estate or tenure or the part thereof belongs to, or is managed on behalf of, the Government, is managed by the Court of Wards or a manager appointed by the District Judge under Section 106 or Section 109, Sub-section (9);

(d) where a settlement of land-revenue is being or is about to be made in respect of the local area, estate or tenure or of the part thereof;

Explanation 1 - The term "settlement of land-revenue", as used in Clause (d) includes a settlement of rents in an estate or tenure which belongs to the Government.

Explanation 2 - A superior landlord may apply for an order under this Section, notwithstanding that his estate or part thereof is temporarily leased to a tenure-holder.

(3) A notification in the official Gazette of an order under this Section shall be conclusive evidence that the order has been duly made.

(4) The survey shall be made and the record-of-rights prepared in accordance with rules made in this behalf by the State Government.

### **113. Particulars To Be Recorded :-**

Where an order is made under Section 112, 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, bazyaftidar, raiyat holding at fixed rates, settled raiyat, occupancy-raiyat, non-occupancy raiyat, under-raiyat or chandnadar; and, if he is a tenureholder, 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 and 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;

(i) [\* \* \*]

(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 conditions and incidents (if any) of the tenancy;

(l) any right of way or other easement attaching to the land for which a record-of-right 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.

#### **114. Power To Order Survey And Preparation Of Record-Of-Rights As To Water :-**

The State Government may, for the purpose of settling or averting disputes existing or likely to arise between landlords, tenants, proprietors, or persons belonging to any of these classes, regarding the use of 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.

#### **115. Power For Revenue Officer To Record Particulars On Application Of Proprietor, Tenure-Holder Or Of Large Proportion Of Raiyats :-**

On the application of one or more of the proprietors or tenure-holders, or of a large proportion of the raiyats, of an estate or tenure, and on the applicants depositing or giving security for the required amount for expenses, a Revenue Officer may, subject to, and in accordance with, rules made in this behalf by the State Government, ascertain and record all or any of the particulars specified in Section 113 with respect to the estate or tenure or any part thereof.

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

(1) When a draft record-of-rights has been prepared, 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 according to such rules as the State Government may prescribe, and (if a settlement of; land revenue is being or is about to be made) the Settlement Rent Roll has been incorporated with the record under Section 124, Sub- section (3), 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.

**117. Presumption As To Final Publication And Correctness Of Record-Of-Rights :-**

(1) In any suit or other proceeding in which a record-of rights 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 Collector of any district in which the local area, estate or tenure or part thereof to which the record-of-rights relates is wholly or partly situate, stating that a record-of-rights has been finally published under this Chapter, shall be conclusive evidence of such

publication.

(2) The State Government may, by notification, declare, with regard to any specified area, that a record-of-rights has been finally published for any village included in such 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;

Provided that, if any entry in a record-of-rights is altered in a subsequent record-of-rights, the latter entry shall be presumed to be correct until it is proved by evidence to be incorrect, but the previous entry shall be admissible as evidence of the facts existing at the time such entry was made.

### **118. Settlement Of Rents And Preparation Of Settlement Rent Roll When To Be Undertaken By Revenue Officer :-**

Settlement of rents, preparation of Settlement Rent Roll, and disposal of objections, in cases where a settlement of land revenue is being or is about to be made

In every case in which a settlement of land revenue is being or is about to be made, the Revenue Officer shall, after publication of the draft of the record-of-rights under Section 116, Sub -section (1)-

(a) settle fair and equitable rents for tenants of every class;

(b) notwithstanding anything contained in Section 248, settle a fair and equitable rent for any land in respect of which he has recorded, in pursuance of Clause (m) of Section 113, that the occupant is entitled to hold it without payment of rent, and

(c) prepare a Settlement Rent Roll :

Provided that the Revenue Officer shall not settle the rents of tenants of every class in an estate or tenure belonging to the Government if it does not appear to the State Government to be expedient that he should do so.

### **119. Procedure For Settlement Of Rent And Preparation Of Settlement Rent Roll Under This Part :-**

(1) For the purposes of settling rents under this Part and preparing a Settlement Rent Roll, the Revenue Officer may proceed in any one or more of the following ways or partly in one of those ways and partly in another, that is to say -

(a) if in any case the landlord and tenant agree between

themselves as to the amount of the rent fairly and equitably payable; the Revenue Officer shall satisfy himself that the rent so agreed upon is fair and equitable; and if he is so satisfied, but not otherwise, it may be settled and recorded as the fair and equitable rent;

(b) the Revenue Officer may himself propose what he deems to be the fair and equitable rent, and if the amount so proposed is accepted, either orally or in writing, by the tenant, and if the landlord, after notice to attend, raises no objection, the rent so proposed may be settled and recorded as the fair and equitable rent;

(c) if the circumstances are, in the opinion of the Revenue Officer, such as to make it practicable to prepare a Table of Rates showing for any local area estate, tenure or village or part thereof, or for each class of land in any local area, estate tenure or village or part thereof, the rate or rates of rent fairly and equitably payable by tenure-holders and raiyats and under-raiyats of each class, he may frame a Table of Rates and settle and record all or any of the rents on the basis of such rates in the manner hereinafter described;

(d) the Revenue Officer may settle all or any of the rents by maintaining the existing rentals recorded in the record-of-rights as published under Section 116, Sub-section (1) or by enhancing or reducing such rents:

Provided that, in making any such settlement, regard shall be had to the principles laid down in Sections 7 to 10, 32 to 43, 45, 46, 51, 58 to 60, 234 to 247.

(2) The Settlement Rent Roll shall show the name of each landlord and of each tenant whose rent has been settled and the amount of each sub tenants rent payable for the area shown against his name.

## **120. Contents Of Table Of Rates :-**

(1) if a Table of Rates is prepared, it shall specify -

(a) the class or several classes of land for which, having regard to the nature of the soil, situation, means of irrigation, and other like considerations, it is in the Revenue Officer necessary or practicable to fix a rate or different rates of rent; and

(b) the rate or rates of rent fairly and equitably payable by tenants holding land of each such class where rent is liable to alteration.

(2) Local publication of Table - When the Revenue Officer has prepared the Table of Rates he shall publish it in the local area,

estate, tenure or village to which it relates, in the vernacular language prevailing in the district, and in the prescribed manner.

(3) Revenue Officer to deal with objections - Any person objecting to any entry in the Table of Rates may present a petition to the Revenue Officer within a period of one month after such publication, and the Revenue Officer shall consider any such objection and may alter or amend the Table.

(4) Table to be submitted to superior revenue authority - If no objection is made within the said period of one month, or, where objections are made, after they have been disposed of, the Revenue Officer shall submit his proceedings to the revenue authority empowered by rule made by the State Government to confirm the Tables and Rent Rolls prepared under this Part (hereinafter called the "confirming authority") with a full statement of the grounds of his proposals, and shall forward any petitions of objection which he may have received.

(5) Proceedings of confirming authority - The confirming authority may confirm a Table submitted under Sub-section (4), or may disallow the same, or may amend the same in any manner which appears to it proper, and may allow in whole or in part any objection forwarded therewith or subsequently made, or may return the case for further inquiry.

(6) Effect of Table - When a Table of Rates has been confirmed by the confirming authority, the order confirming it shall be conclusive evidence that the proceedings for the preparation of the Table have been duly conducted in accordance with this Act; and it may be presumed that the rates shown in the Table for tenants of each class, for each class of land, are the fair and equitable rates payable for land of that class within the area to which the Table applies.

### **121. Application Of Table Of Rates :-**

When a Table of Rates has been confirmed under Section 120, Sub-section (5), the Revenue Officer may settle all or any of the rents, and prepare the Settlement Rent Roll, on the basis of the rates shown in the Table, by calculating the rental of each tenure or each holding of a raiyat or under-raiyat on the area of such tenure or holding at the said rates :

Provided that the Revenue Officer shall not be bound to apply the said rates in any particular case in which he may consider it unfair or inequitable to do so.

## **122. Rules And Principles To Be Followed In Framing Table Of Rates, And Settling Rents In Accordance Therewith :-**

In framing a Table of Rates under Section 120, and in settling rents under Section 121, the Revenue Officer shall be guided by such rules as the State Government may make in this behalf, and shall, so far as may be, and subject to the proviso to the said Section 121, have regard to the general principles of this Act regulating the enhancement or reduction of rents.

## **123. Preliminary Publication And Amendment Of Settlement Rent Roll :-**

(1) When a Settlement Rent Roll for a local area, estate, tenure or village or part thereof has been prepared, the Revenue Officer shall cause a draft of it to be published in the prescribed manner and for the prescribed period, and shall receive and consider any objections made to any entry therein, or omission therefrom, during the period of publication, and shall dispose of such objections according to such rules as the State Government may prescribe.

(2) The Revenue Officer may, of his own motion or on the application of any party aggrieved, at any time before a Settlement Rent Roll is submitted to the confirming authority under Section 124, revise any rent entered therein :

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

## **124. Final Revision Of Settlement Rent Roll And Incorporation Of The Same In The Record-Of-Rights :-**

(1) When all objections have been disposed of under Section 123, the Revenue Officer shall submit the Settlement Rent Roll to the confirming authority, with a full statement of the grounds of his proposals and a summary of the objections (if any) which he has received.

(2) The confirming authority may sanction the Settlement Rent Roll, with or without amendment, or may return it for revision :

Provided that no entry shall be amended, or omission supplied until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

(3) After sanction by the confirming authority, the Revenue Officer shall finally frame the Settlement Rent Roll, and shall incorporate it

With the record-of-rights published in draft under Section 116.

**125. Appeal To, And Revision By, Superior Revenue Authorities :-**

(1) An appeal, if presented within two months from the date of the order appealed against, shall lie from every order passed by a Revenue Officer, prior to the final publication of record-of-rights, on any objection made under Section 120, Sub-section (3) or Section 123; and such appeal shall lie to such superior revenue authority as the State Government may, by rule, prescribe.

(2) The Board of Revenue may, in case under this Part, on application or of its own motion, direct the revision of any record-of-rights, or any portion of a record-of-rights, at any time within two years from the date of the certificate of final publication, but not so as to affect any order passed by a Civil Court under Section 126 :

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.

**126. Jurisdiction Of Civil Courts In Matters Relating To Rent :-**

(1) Any person aggrieved by an entry of a rent settled in a Settlement Rent Roll prepared under Sections 119 to 124 and incorporated in a record-of-rights finally published under Section 116, or by an omission to settle a rent for entry in such Settlement Rent Roll, may institute a suit in the Civil Court which would have jurisdiction to entertain a suit for the possession of the land to which the entry relates or in respect of which the omission was made.

(2) Such suit must be instituted within six months from the date of the certificate of final publication of the record-of-rights, or, if an appeal has been presented to a revenue authority under Section 125, then within six months from the date of the disposal of such appeal.

(3) Such suit may be instituted on any of the following grounds and on no others, namely :

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

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

(c) that the relation of landlord and tenant does not exist;

- (d) that the land has been wrongly recorded as part of a particular estate, Sub-proprietary interest or tenancy, or wrongly omitted from the lands of an estate, Sub-proprietary interest or tenancy;
- (e) that the tenant belongs to a class different from that to which he is shown in the record-of-rights, as belonging;
- (f) that the Revenue Officer has not postponed the operation of the settled rent under the provisions of Section 139, proviso (a) or has wrongly fixed the date from which it is to take effect under that clause;
- (g) that the special conditions and incidents of the tenancy, or any right of way or other easement attaching to the land which is the subject of the tenancy, have not, or has not, been recorded, or have, or has been wrongly recorded.

The Government shall not be made a Defendant in any such suit, unless the Government is landlord or tenant of the land to which the aforesaid entry relates or in respect of which the aforesaid omission has made.

(4) If it appears to the Court that the entry of rent settled is incorrect, it shall, in case (a) or case (c) mentioned in Sub-section (3), declare that no rent is payable, and shall in any other case settle a fair rent;

and, in any case referred to in Clause (f) or Clause (g) of the said Sub-section (3), the Court may declare the date from which the rent settled is to take effect, or pass such order relating to the entry as it may think fit.

(5) When the Court has declared under Sub-section (4) that no rent is payable, the entry to the contrary effect in the record-of-rights shall be deemed to be cancelled.

(6) In settling a fair rent under Sub-section (4), the Court shall be guided by the rents of the other tenures or holdings of the same class comprised in the same Settlement Rent Roll, as settled under Sections 119 to 124.

(7) Any rent settled by the Court under Sub-section (4) shall be deemed to have been duly settled in place of the rent entered in the Settlement Rent Roll.

(8) Save as provided in this Section, no suit shall be brought in any Civil Court in respect of the settlement of any rent or the omission to settle any rent under Sections 119 to 124.

(9) When a Civil Court has passed final orders or a decree under this Section, it shall notify the same to the Collector of the district who shall make a note of such orders or decree in the record-of-rights finally published under Section 116, Sub-section (2), and



such note shall be deemed, to be part of the record.

**127. Presumptions As To Rents Settled Under Sections 119 To 125 :-**

Subject to the provisions of Section 126, all rents settled under Sections 119 to 124 and entered in a record-of-rights finally published under Section 116, or settled under Section 125, shall be deemed to have been correctly settled and to be fair and equitable rents within the meaning of this Act.

**128. Settlement Of Rent By Revenue Officer In Cases Where A Settlement Of Land Revenue Is Not Being Or Is Not About To Be Made :-**

**PART-III**

Settlement of rents and decision of disputes in cases where a settlement of land-revenue is not being or is not about to be made

(1) When, in any case in which a settlement of land-revenue is not being made or is not to be made, either the landlord or the tenant applies, within three months from the date of the certificate of the final publication of the record-of-rights under Section 116, Sub-section (2), for a settlement of rent the Revenue Officer shall settle a fair and equitable rent in respect of the land by the tenant.

Explanation - Superior landlord may apply for a settlement of rent, notwithstanding that his estate or tenure or part thereof has been temporarily leased.

(2) When, in any case in which a settlement of land-revenue is not being made or is not about to be made, the Revenue Officer has recorded, in pursuance of Clause (m) of Section 113, that the occupant of any land claimed to be held rent-free is not entitled to hold it without payment of rent, and either the landlord or the occupant applies within three months from the date of the certificate of the final publication of the record-of-rights under Section 116, Sub-section (4), for a settlement of rent, the Revenue Officer shall settle a fair and equitable rent for the land.

(3) Every application under Sub-section (1) or Sub-section (2) has, notwithstanding anything contained in the Court-fees Act, 1870 (VII of 1870) bear such Stamp as the State Government may prescribe by notification in the official Gazette.

(4) In settling rents under this Section, the Revenue Officer shall presume until the contrary is proved, that the existing rent is fair and equitable, and shall have regard to the rules laid down in this

Act for the guidance of the Revenue Courts in increasing or reducing rents, as the case may be.

(5) The Revenue Officer may in any case under this Section propose to the parties such rents as he considers fair and equitable; and the rents so proposed, if accepted orally or in writing by the parties, may be recorded as the fair rents, and shall be deemed to have been duly settled under this Act.

(6) Where the parties agree among themselves, by compromise or otherwise, as to the amount of the fair rent, the Revenue Officer shall satisfy himself that the amount agreed upon is fair and equitable, and if so satisfied, but not otherwise, he shall record the amount so agreed upon as the fair and equitable rent, if not so satisfied, he shall himself settle a fair and equitable rent as provided in Sub-sections (4) and (5).

(7) An applicant for a settlement of rent under this Section may not dispute any entry in, or any omission from, the finally published record, unless he files simultaneously a plaint under Section 130 for the alteration of such record, in which case the Court shall proceed to dispose of the same before dealing with the application under this section.

### **129. Decision Of Questions Arising During The Course Of Settlement Of Rents Under This Part :-**

Where, in any proceedings for the settlement of rents under this Part, any of the following issues arise-

- (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, sub-proprietary interest or tenancy, or wrongly omitted from the lands of an estate, sub-proprietary interest or tenancy;
- (e) whether the tenant belongs to a class different from that to which he is shown in the record-of-rights as belonging;
- (f) whether the special conditions and incidents of the tenancy or any, right of way or other easement attaching to the land, have not, or has not, been recorded, or have, or has, been wrongly recorded;

the Revenue Officer shall try and decide such issue and settle the rent under Section 128 accordingly :

Provided that the Revenue Officer shall not try any issue under this Section 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, and has been tried and decided, or is already being tried, by a Revenue Officer in a suit instituted before him under Section 130.

### **130. Institution Of Suit Before A Revenue Officer :-**

In proceedings under this Part, 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 116, by presenting a plaint on stamped paper for the decision of any dispute regarding any entry which Revenue Officer has made in, or any omission which the said officer has made from, the record, whether such dispute be between landlord and tenant, or between landlords of the same or of neighboring estates, or between tenant and tenant, or as to whether the relationship of landlord and tenant exists, or as to whether land held rent-free is properly so held, or as to any other question relating to the title in land or to any interest in land as between parties to the suit; and the Revenue Officer shall bear and decide the dispute:

Provided that the Revenue Officer may, subject to such rules as the State Government may prescribe in this behalf, transfers 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 rents under this Part, where such issue has been tried and decided, or is already being tried, by a Revenue Officer under Section 129.

### **131. Procedure To Be Adopted By Revenue Officer :-**

(1) In all proceedings under Section 128, Section 129 and Section 130, the Revenue Officer shall, subject to rules made by the Code of Civil Procedure, 1908 (V of 1908), for the trial of suits; and his decision in every such proceedings 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 Sections 132 and 135, shall be final.

(2) Notwithstanding the period of limitation provided for in Sections

128 and 130, the Revenue Officer may, at his discretion, permit an application under Section 128, or a suit under Section 130, to be amended by the addition of parties, or otherwise, at any time during the pendency of the same.

(3) A note of all rents settled under Section 128 and of all decisions of issues or disputes under Section 129 or Section 130, and of all rents commuted under Section 47 by a Revenue Officer, appointed by the designation of Settlement Officer or Assistant Settlement Officer, shall be made in the record-of-rights finally published under Sub-section (2) of Section 116, and such note shall be deemed to be part of the record.

### **132. Revision By Revenue Officer :-**

Any Revenue Officer specially empowered by the State Government in this behalf may, on application or of his own motion, within twelve months from the making of any order or decisions under Section 128, Section 129, Section 130, or Section 131, revise the same, whether it was made by himself or by any other Revenue Officer, but not so as to affect any order passed or decree made under Section 135 :

Provided that no such order or decision shall be so revised if an appeal from it is pending under Section 135 or until reasonable notice has been given to the parties concerned to appear and be heard in the matter,

### **133. Correction By Revenue Officer Of Mistakes In Record-Of-Rights :-**

Any Revenue Officer specially empowered, by the State Government in this behalf may, on application or of his own motion, within twelve months from the date of the certificate of the final publication of the record-of-rights under Sub-section (2) of Section 116, correct any entry in such record-of-right which he is satisfied has been made owing to a bona fide mistake :

Provided that no such correction shall be made if an appeal affecting such entry is pending under Section 135, or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

### **134. Bar To Jurisdiction Of Civil Courts :-**

Subject to the provisions of Section 135, a Civil Court shall not

entertain any application or suit concerning any matter which is or has already been the subject of an application made, suit instituted or proceeding taken under Sections 128 to 132.

### **135. Appeals From Decisions Of Revenue Officers :-**

(1) The State Government shall appoint one or more persons to be a Special Judge or Special Judges for the purpose of hearing appeals from the decisions of Revenue Officers under Sections 128 to 133.

(2) An appeal shall lie to the Special Judge from the decisions of Revenue Officer under Sections 129 to 133; and the provisions of the Code of Civil Procedure, 1908 (V of 1908) relating to appeals shall, as nearly as may be, apply to all appeals.

(3) Subject to the provisions of Sections 103, 104 and 107 of the Code of Civil Procedure, 1908 (V of 1908), an appeal shall lie to the High Court from the decision of a Special Judge in any case under this Section (not being a decision settling a rent), as if he were a Court subordinate to the High Court within the meaning of the said Section 103 :

Provided that, if in a second appeal the High Court alters the decision of the Special Judge in respect of any of the particulars with reference to which the rent of any tenure of holdings has been settled, the Court may settle a new rent for the tenure of holding, but in so doing shall be guided by the rents of the other tenures or holdings of the same class comprised in the same record as ascertained under Section 113 or settled under Section 128 or Section 132 of this Act.

### **136. Power Of Revenue Officer To Give Effect To Agreement Or Compromise :-**

#### **PART-IV**

#### **Supplemental provisions**

(1) In framing a record-of-rights, and in deciding disputes under this Chapter, the Revenue Officer shall give effect to any lawfully agreement or compromise made or entered into by any landlord and his tenant.

But he shall not give effect to any agreement or compromise the terms of which, if they were embodied in a contract, could not be enforced under this Act.

(2) Where any agreement or compromise has been made for the purpose of settling a dispute as to the rent payable, the Revenue

Officer shall, in order to ascertain whether the effect of such agreement or compromise would be to enhance the rent in a manner, or to an extent, not allowed by Section 34 in the case of a contract, record evidence as to the rent which was legally payable immediately before the period in respect of which the dispute arose.

(3) Where the terms of any agreement or compromise are such as might unfairly or inequitably affect the rights 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.

Illustration - A, a proprietor, agrees that B, his tenant, shall be recorded as an occupancy-raiyat; this affect the rights of the tenants of B. The Revenue Officer must, under Sub-section (3), inquire whether B is a tenure-holder or a raiyat as defined in Chapter II. If he finds on the evidence that B is a raiyat, he may give effect to the agreement, but shall not do so if he finds that B is a tenure-holder.

### **137. Power Of Revenue Officer To Settle Rents On Agreement :-**

(1) Notwithstanding anything contained in Section 136, if, in any case, while the record is being prepared, the landlord and tenant agree as to the rent which shall be recorded as payable for the tenure or holding, a Revenue Officer specially empowered in this behalf by the State Government may, if he is satisfied that the rent agreed upon is fair and equitable, but not otherwise, settle such rent as a fair and equitable rent, although the terms of the agreement are such that, if they are embodied in a contract; they could not be enforced under this Act; and the provisions of Section 144 shall apply to a rent so Settled.

(2) A landlord or tenant may appeal to the Special judge appointed under Section 135 on the ground that the rent settled by the Revenue Officer, under Sub-section (1), as a fair and equitable rent, was not agreed to by such landlord or tenant, and on no other ground.

(3) The Board of Revenue may, on application made, or of its own motion in proceedings undertaken, within one year from the date of the order, under Sub-section (1), settling a rent as a fair and equitable rent direct the revision of the rent so settled:

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.

**138. Note Of Decisions In Record :-**

A note of all rents settled and of all decisions of disputes, on revisions or appeal under Section 132, Section 135, or Sub-section (2) or Sub-section (3) of Section 137, shall be made in the record-of-rights finally published under Sub-section (2) of Section 116; and such note shall be deemed to be part of the record.

**139. 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 fixing the rent or (If a settlement of land-revenue is being or is about to be made) the date of final publication of the Settlement Rent-Roll.

Provided as follows :

- (a) if the land is comprised in an area, estate or tenure in respect of which a settlement of land-revenue is being or is about to be made, the rent settled shall, subject to the provisions of Sections 247 and 248, take effect from the other date after the expiration of that period as may be fixed by the Revenue Officer;
- (b) if the land is not comprised in an area, estate or tenure as aforesaid, and if the existing rent has been fixed by a contract binding between the parties for an unexpired term of years, the rent settled shall take effect from such other date after the expiration of that term as may be fixed by the Revenue Officer.

**140. Stay Of Proceedings During Preparation Of Record-Of-Rights :-**

When an order has been made under Section 112, directing the preparation of a record-of-rights, no Court shall -

- (a) where a settlement of land-revenue is being or is about to be made until after the final publication of the record-of-rights, and
- (b) where a settlement of land-revenue is not being made or is not about to be made until three months after the final publication of the record-of-rights.

entertain any application made under Section 210, or any suit or application for the alteration of the rent or the determination of the status of any tenant, in the area to which the record-of-rights

applies.

**141. Limitation Of Jurisdiction Of Civil Courts In Matters, Other Than Rent, Relating To Record-Of-Rights :-**

No suit shall be brought in any Civil Court in respect of any order directing the preparation of a record-of-rights under this Chapter, or in respect of the framing, publication, signing or attestation of such a record or, of, any part of it, or, save as provided in Section 126, for the alteration of any entry in such a record of a rent settled under Sections, 119 to 124 :

Provided that any persons who is dissatisfied with any entry, in, or omission from a record-of-rights framed in pursuance of an order made under Clause (d) of Sub-section (2) of Section 112, which concerns a right of which he is in possession, may institute a suit for declaration of his right under Chapter VI of the Specific Relief Act, 1877 (1 of 1877).

**142. Stay Of Suits In Which Certain Issues Arise :-**

(1) Where a record-of-rights has been final), published in respect of the land in any area in which a settlement of land revenue is not being made or is not about to be made, no application or suit affecting such land or any tenant thereof shall, within three months from the date of the certificate of final publication of such record-of-rights, be made or instituted in any Civil Court for the decision of any of the following issues, namely :

(a) whether the land is or is not liable to the payment of rent;  
(b) whether the relation of landlord and tenant exists;  
(c) whether the land is part of a particular estate of tenancy; or  
(d) whether there is any special condition or incident of the tenancy, or whether any right of way or other easement attaches 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 in a Civil Court the Revenue Officer shall not entertain any suit under Section 130 involving the decision of the same issue.

(3) Where, in the course of setting fair rents under Section 128, the Revenue Officer finds that by reason of a suit involving the decision of any of the issues mentioned in Sub-section (1) having been instituted in a Civil Court before the final publication of the record-of-rights, or before a Revenue Officer under Section 130, he



is unable to settle a fair rent until such issue is decided, the Revenue Officer shall stay the proceedings for this settlement of a fair rent, pending a final decision on the issue.

And, after the issue has been finally decided, he shall settle a fair rent, as if the record of rights has been framed in accordance with such decision.

(4) Where the making of an application or institution of a suit has been delayed owing to the operation of Sub-section (1), the period of three months therein mentioned shall be excluded in computing the period of limitation prescribed for such suit or application.

### **143. Power To Authorise Special Settlement In Special Cases :-**

(1) The State Government may, on being satisfied that the exercise of the powers hereinafter mentioned is necessary in the interests of public order or of the local welfare, or that any landlord is demanding rents which have been illegally enhanced above those entered as payable in a record of rights finally published under this Chapter, invest a Revenue Officer with the following powers or either of them, namely:

(a) power to settle all rents;

(b) power, when settling rents, to reduce rents, if, in the opinion of the officer, the maintenance of existing rents would on any ground, whether specified in this Act or not, be unfair or inequitable.

(2) the powers given under this section may be made exercisable within a specified area either generally or with reference to specified cases or classes of cases.

(3) A settlement of rents under this Section shall be made in the manner provided by Section 118 to 127.

When the State Government takes any action under this Section, the settlement record prepared by the Revenue Officer shall not take effect until it has been finally confirmed by the State Government, and the revision, by direction of the Board of Revenue under Sub-section (2), of Section 125, of record-of-rights or any portion of a record-of-rights, prepared under this Section, shall be subject to like confirmation by the State Government.

### **144. Period For Which Rents As Settled Are To Remain Unaltered :-**

(1) When the rent of a tenure or holding is settled under this Chapter, it shall not, except on the ground of a landlords

improvement or of a subsequent alteration in the area of the tenure or holding, be enhanced, in the case of a tenure or an occupancy holding or the holding of an under-raiyat having occupancy rights for fifteen years, and, in the case of a non-occupancy holding or the holding of an under-raiyat not having occupancy rights, for five years; and no such rent shall be reduced within the periods aforesaid, save on the ground of alteration in the area of the holding or on the ground specified in Clause (a) of Sub-section (1) of Section 45.

(2) The said periods of fifteen years and five years shall be counted from the date on which the rent settled takes effect under this Chapter.

#### **145. Expenses Of Proceedings Under This Chapter :-**

(1) When the preparation of a record-of-rights has been directed or undertaken under this Chapter in any case except where settlement of land revenue is being or is about to be made, 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 provisions of this Chapter), or such part of those expenses as the State Government may direct, shall be defrayed by the landlords, tenants and occupants of land in that local area, estate, tenure or part in such proportions, and in such installments (if any), as the State Government having regard to all the circumstances, may determine.

(2) 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 State Government may direct, may be recovered in advance in the Same manner as if such expenses had been already incurred.

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

(4) The cost of preparing copies of survey maps and records-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 provisions of this Chapter.

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

**146. Presumption As To Fixity Of Rent Not To Apply Where Record-Of-Rights Has Been Prepared :-**

When the particulars mentioned in Section 113, Clause (b), have been recorded under this Chapter in respect of any tenancy, the presumption under Section 58 shall not thereafter apply to that tenancy.

**147. Demarcation Of Village Boundaries :-**

In the demarcation of village boundaries for the purpose of making survey and preparing a record-of-rights under this Chapter, a Revenue Officer shall, so far as it possible, and subject to the provisions of the Bengal Survey Act, 1875 (Bengal Act V of 1875), preserve, as the unit of survey and record, the area contained within the exterior boundaries of the village maps of the revenue survey (if any);

and, where village maps prepared at a previous survey exist, he shall not without the sanction of the Board of Revenue, adopt any other area as such unit.

**148. Validation Of Publication Of Certain Past Records :-**

All record published, whether in draft or final form, before the fifth day of November, 1898, under Section 105 of the Bengal Tenancy Act, 1885 (VIII of 1885) as originally passed, shall be deemed to have been duly published.

**149. Effect Of Settlements Of Rent And Decisions By Revenue Officers Made Before The 5Th November, 1898 :-**

Every settlement of rent or decision of a dispute by a Revenue Officer before the fifth day of November, 1898, under Section 104 or Section 106 of the Bengal Tenancy Act, 1885 (VIII of 1885) as originally passed in respect of which no appeal was, before that date, preferred to the Special Judge appointed under Section 108 of that Act, as originally passed, shall have the force and effect of a decree of a Civil Court in a suit between the parties, and shall be final.

## **CHAPTER 12 RECORD OF PROPRIETORS' PRIVATE LANDS**

### **150. Power Of Government To Order Survey And Record Of Proprietors Private Lands :-**

The State Government may make an order directing a Revenue Officer to make a survey and record of all the lands in a specified local area which are proprietors private lands.

### **151. Power Of Revenue Officer To Record Private Land On Application Of Proprietor Or Tenant :-**

In the case of any land alleged to be a proprietors private land, on the application of the proprietor or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue Officer may, subject to, and in accordance with, rules made in this behalf by the State Government ascertain and record whether the land is not a proprietors private land.

### **152. Procedure For Recording Private Land :-**

When a Revenue Officer proceeds under either Section 150 or Section 151, the provisions of Sections 116, 117, 130, 131, 132, 134 and 135 shall apply.

### **153. General Rules For Determination Of Proprietors Private Lands :-**

(1) Except in estates of the class referred to in Section 154, the Revenue Officer shall record as a proprietors private land-

- (a) land which is proved to have been cultivated as nijjote, khamar or khudkast by the proprietor himself with his own stock or by his own servants or by hired labour for twelve continuous years immediately before the commencement of this Act; and
- (b) cultivated land which is recognised by village usage as proprietors nij-jote, khamar or khudkast.

(2) In determining whether any other land in any such estate ought to be recorded as a proprietors private land, the officer shall have regard to local custom or usage, and to the question whether the land was before the twenty-first day of August, 1906, specifically let as proprietors private land, and to any other evidence that may be produced : but shall presume that land is not a proprietors private until the contrary is shown.

(3) Notwithstanding anything contained in any agreement or

compromise, or in any decree which is proved to his satisfaction to have been obtained by collusion or fraud, a Revenue Officer shall not record any land in any such estate as a proprietors private land unless it is proved to be such by satisfactory evidence of the nature described in Sub-section (1) or Sub section (2).

(4) If any question arises in any Court as to whether land in any such estate is or is not a proprietors private land, the Court shall have regard to the rules laid down in this Section for the guidance of Revenue Officers.

#### **154. Special Rules For Determination Of Proprietors Private Lands In Temporarily-Settled Estates :-**

(1) In temporarily-settled estates for which a record-of-rights has been prepared and finally published under Chapter X of the Bengal Tenancy Act, 1885 (VIII of 1885) between the years 1891 and 1900 inclusive, and again between the years 1906 and 1912 inclusive, a proprietors private land shall include -

(a) land which has recorded as nij-jote in the record-of-right prepared between the years 1906 and 1912; and

(b) land recorded as the nij-chas of a proprietor or sub-proprietor other than a sub-proprietor referred to in Sub-clause (i) of Clause (21) of Section 3 in the record-of-rights prepared between the years 1891 and 1900, which has again been recorded as his nij-chas in the record-of-right prepared between the years 1906 and 1912.

(2) Any land, recorded as nij-chas in a record-of-rights finally published between the years 1906 and 1912, which falls within the category of proprietors private land under the provisions of Clause (b) of Sub-section (1), shall be deemed to have become proprietors private land with effect from the date of the final publication of such record.

(3) No land in a temporarily-settled estate which is not covered by Sub-section (1) shall be held to be a proprietors private land.

### **CHAPTER 13 DISTRAINT**

#### **155. Cases In Which Distraint May Be Made :-**

Where an arrear of rent is due to the landlord of a raiyat or under-raiyat, and has not been due for more than a year, and no security has been accepted therefore by the landlord, the landlord may, in addition to any other remedy to which he is entitled by law, recover

the arrear under the provisions of this Chapter, by distraining, while in the possession of the cultivator -

(1) Any crops or other products of the earth standing or ungathered on the holding; and

(2) Any crops or other products of the earth while have been grown on the holding and have been reaped or gathered and are deposited on the holding or on a threshing-floor or place for treading out grain, or the like, whether in the fields or within a homestead:

Provided that no distraint shall be made-

(i) by a proprietor or manager, as defined in the Land Registration Act, 1876 (Ben. Act VII of 1876) or a mortgagee of such a proprietor or manager, unless his name and the extent of his interest in the land in respect of which the arrear is due have been registered under that Act; or

(ii) by a Sub-proprietor, bazyaftidar, or tenure-holder, unless his name and the extent of his interest in the land in respect of which the arrear is due have been -

(a) registered under Sections 14, 15 or 16, or under any law previously in force; or

(b) record in a record-of-rights finally published under Chapter XI or under some other law for the time being in force; or

(iii) by an agent employed in the collection of rent, unless he is expressly authorised by power of attorney in that behalf; or

(iv) for the recovery of any sum in excess of the rent payable for the holding in the preceding agricultural year, unless that sum is payable under a written contract or in consequence of a proceeding under this Act or an enactment hereby repealed; or

(v) where the holding or any part of the holding of a raiyat has been sub-let with the written consent of the landlord in respect of the produce of such holding or part; or

(vi) where the holding or any part of the holding of a bazyaftidar raiyat has been sub-let in respect of the produce of such holding or part.

### **156. Service Of Demand And Notice :-**

(1) The distrainer shall, at the time of making the distraint, serve on the defaulter a written demand for the arrear due and the costs incurred in making the distraint, with a notice stating the grounds on which the distraint is made and containing also the following particulars, namely :

- (a) the holding in respect of which the arrear is claimed, and the boundaries thereof, or such other particulars as may suffice for its identification;
- (b) the name of the tenant;
- (c) the period in respect of which the arrear is claimed;
- (d) the amount of the arrear, with the interest, if any, claimed thereon, and, when an amount in excess of the rent payable by the tenant in the last preceding agricultural year is claimed, the contract or proceedings, as the case may be, under which that amount is payable;
- (e) the nature and approximate value of the produce to be distrained;
- (f) the place where it is to be found, or such other particulars as may suffice for its identification; and
- (g) if it is standing or ungathered, the time at which it is likely to be out or gathered.

(2) The said notice shall be signed and verified in the manner provided in Rules 14 and 15 in Order VI in the first Schedule to the Code of Civil Procedure, 1908 (V of 1908).

(3) Where the distrainer has reason to believe that a person other than the defaulter is the owner of the property distrained, he shall serve copies of the demand and notice on that person likewise.

(4) The demand and notice shall, if practicable, be served personally; but if a person on whom they are to be served absconds or conceals himself, or cannot otherwise be found, the distrainer shall affix copies of the demand and notice on a conspicuous part or the outside of the house in which he usually resides.

### **157. Right To Distrain After Delivering A List Of Property To Owner :-**

(1) Unless the demand with all costs of the distraint be immediately paid or tendered, the distrainer may distrain property referred to in Section 155 to such value as may be expected to meet such demand and costs.

(2) Before seizing any property, the distrainer shall prepare a list or description thereof; and shall deliver a copy of the list to the owner of the property, or, if he is absent, shall affix it at his usual place of residence.

### **158. Right To Reap, Etc., Produce :-**

(1) A distraint under this Chapter shall not prevent any person from reaping, gathering or storing any produce or doing any other act necessary for its due preservation.

(2) If the person entitled to do so fails to do so at the proper time, the distrainer shall cause any standing crops or ungathered products distrained to be reaped or gathered when ripe, and stored in such granaries or other places as are commonly used for the purpose, or in some other convenient place in the neighborhood, or shall do whatever else may be necessary for the due preservation of the same.

(3) In either case the distrained property shall remain in the charge of the distrainer or of some other person appointed by him in this behalf.

### **159. Assistance Of Police Officer In Making Distraint :-**

If a distrainer is opposed, or apprehends resistance, and desires to obtain the assistance of a public Officer, he may apply to the Collector; and the Collector may, if he thinks it necessary to do so, depute an officer to support the distrainer in making the distraint.

### **160. Application To Public Officer For Sale :-**

(1) Within five days from the time of the storing of any distrained crops or products, or, if the crops or products do not, from their nature, admit of being stored, then within five days from the time of making the distraint, the distrainer shall apply for sale of the same to such officer, not below the rank of Kanungo, as the State Government may prescribe.

(2) The said application shall be in writing, shall contain an inventory or description of the property distrained, and shall state -

(a) the name of the defaulter, and his place of residence;

(b) the amount due;

(c) the date of the distraint; and

(d) the place in which the distrained property is deposited;

and shall be accompanied by the sum required for the service of a notice upon the defaulter under Clause (b) of Sub-section (1) of Section 161.

### **161. Procedure On Receipt Of Such Application :-**

(1) When any officer referred to in Section 160, Sub-section (1), receives an application under that Section, he shall forthwith -



- (a) send a copy of the application to the Collector;
  - (b) serve a notice, in the prescribed form, on the person whose property has been distrained, requiring him either to pay the amount demanded or to institute a suit to contest the demand of the distrainer before the Collector within the period of fifteen days from the receipt of the notice;
  - (c) send to the Collector, for the purpose of being put up on his office, a proclamation fixing a day for the sale of the distrained property, which shall not be less than twenty days from the date of the application; and
  - (d) deliver a copy of the said proclamation to the person charged with the service of the said notice, to be put up by him in the place where the distrained property is deposited.
- (2) The said proclamation shall contain a description of the trained property, and shall state the demand for which the property is to be sold and the place where the sale is to be held.

#### **162. Suspension Of Sale When Suit Instituted :-**

- (1) If a suit is instituted before the Collector in pursuance of the notice referred to in Clause (b) of Sub-section (1) of section 161, the Collector shall send to the officer referred to in Sub-section (1) of Section 160, or, if so requested shall deliver to the owner of the distrained property, a certificate of the institution of the suit.
- (2) A person whose property has been distrained under this Chapter may, Immediately after the distraint and before an application is made under Sub-section (1) of Section 160, institute a suit to contest the demand of the distrainer; and the Collector shall thereupon proceed as provided in Subsection (1).
- (3) When a certificate under Sub-section (1) or Sub-section (2) is received by or presented to an officer referred to in Section 160, Sub-section (1), shall suspend further proceedings in regard to the sale of the distrained properly, pending the decision of the suit.

#### **163. Withdrawal Of Distraint When Security Given For The Payment Of Any Sum That May Be Decreed :-**

- (1) When any person whose property has been distrained has instituted a suit to contest the demand of the distrainer, he may, at any time, execute a bond with security binding himself to pay whatever sum may be adjudged in the suit to be due from him, with interest and costs.
- (2) When such a bond is executed, the Collector shall give, to the

said person a certificate to that effect, or, if so requested shall serve the distrainer with notice that such a certificate has been given;

and upon such certificate being presented to the distrainer by the said person, or served on the distrainer by the Collector, the property shall be released from distraint.

**164. Sale When To Be Made :-**

On the expiration of the period fixed in the proclamation of sale, the officer referred to in Section. 160, Sub-section (1), shall-

(a) if a certificate under Section 162 of the institution of a suit to contest the demand of the distrainer has not been received by or presented to him;

(b) if a certificate has not been given under Section 163; and

(c) if the said demand, with such costs of the distraint as are allowed by him, be not paid in full.

proceed to sell the property, or such part thereof as it may be necessary to sell in order to realise the said demand and costs.

**165. Place Of Sale :-**

The sale shall be held at the place where the distrained property is, or at the nearest place of public resort if the officer holding the sale is of opinion that it is likely to sell there to better advantage.

**166. When Produce May Be Sold Standing :-**

(1) Crops or products which from their nature admit of being stored shall not be sold before they are reaped or gathered and are ready for strong.

(2) Crops or products which from their nature do not admit of being stored may be sold before they are reaped or gathered, and the purchaser shall be entitled to enter on the land, by himself or by any person appointed by him in this behalf, and do all that is necessary for the purposes of tending and reaping or gathering them.

(3) In every case referred to in Sub-section (2), the distraint shall be made at least twenty days before the time when the crops or products or any part thereof would be fit for reaping or gathering.

**167. Manner Of Sale :-**

The property shall be sold by public auction, in one or more lots as

the officer holding the sale may think advisable; and if the demand, with the costs of distraint and sale, is satisfied by the sale of a portion of the property, the distraint shall be immediately withdrawn with respect to the remainder.

**168. Postponement Of Sale :-**

If on the property being put up for sale a fair price (in the estimation of the officer holding the sale) is not offered for it, and if the owner of the property, or a person, authorised to act on his behalf, applies to have the sale postponed till the next day, or (if a market is held at the place of sale) the next market-day, the sale shall be postponed until that day, and shall be then completed, whatever price may be offered for the property.

**169. Payment Of Purchase Money :-**

The price of every lot shall be paid at the time of sale or soon thereafter as the officer holding the sale directs, and in default of such payment the property shall be put up again and sold.

**170. Certificate To Be Given To Purchaser :-**

When the purchase money has been paid in full, the officer holding the sale shall give the purchaser a certificate describing the property purchased by him and stating the price paid.

**171. Application Of Proceeds Of Sale :-**

(1) From the proceeds of every sale of distrained property the officer holding the sale shall make a deduction at the rate of one anna in the rupee as a charge for the expenses of the sale, and shall send the amount to the Collector for credit to the State Government.

(2) He shall then pay to the distrainer the expenses incurred by the distrainer on account of the distraint and of the issue of the notice and proclamation of sale required by Section 161, to such amount as, after examination of the statement of expenses furnished by the distrainer, he may think proper to allow.

(3) The remainder shall be applied to the discharge of the arrear for which the distraint was made, with the interest thereupon up to the day of sale; and the surplus (if any) shall be paid to the person whose property has been sold.

## **172. Certain Persons May Not Purchase :-**

Officers holding sales of property under this Act, and all persons employed by, or subordinate to, such officers, are prohibited from purchasing, either directly or indirectly any property sold by such officers.

## **173. Procedure Where Demand Is Paid Before The Sale :-**

(1) If at any time after a distraint has been made under this Chapter, and before the sale of the distrained property, the defaulter, or the owner of the distrained property, where he is not the defaulter, tenders payment of the amount specified in the demand served under Section 156, with all costs which may have been incurred after the service of the demand, the distrainer shall receive such payment and shall grant a receipt for the same, and the distraint shall forthwith be withdrawn.

(2) A receipt granted under this Section to an owner of distrained property not being the defaulter shall afford a full protection to him against any subsequent claim for the arrears of rent on account of which the distraint was made.

## **174. Amount Paid By Under-Tenant For His Lessor May Be Deducted From Rent :-**

(1) When an inferior tenant, on his property being lawfully distrained under this Chapter for the default of a superior tenant, makes any payment under Section 173, he shall be entitled to deduct the amount of that payment from any rent payable by him to his immediate landlord, and that landlord if he is not the defaulter, shall in like manner be entitled to deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on, until the defaulter is reached.

(2) Nothing in this section shall affect the right of an inferior tenant making a payment under Section 173 to institute a suit for the recovery from the defaulter of any portion of the amount paid which he has not deducted under this Section.

## **175. Conflict Between Rights Of Superior And Inferior Landlords :-**

When land is sub-let and any conflict arises under this Chapter between the rights of a superior landlord and an inferior landlord

who distrain the same property, the right of the superior landlord shall prevail.

**176. Report Of Irregularities :-**

All officers referred to in Section 160, Sub-section (1), shall bring to the notice of the Collector any material irregularity committed by distrainers under colour of this Act.

**177. Postponement Of Sale Where Due Notice Not Given :-**

If in any case, on proceeding to hold a sale of property, any such officer finds that the owner of the property has not received due notice of the distraint and intended sale, he shall postpone the sale and report the case to the Collector; and the Collector shall direct the issue of another notice and proclamation of sale under Section 161 or shall pass such order as he may think proper.

**178. Charge To Be Made For Expenses When No Sale Takes Place :-**

When an officer referred to in Section 160, Sub-section (1), has proceeded to any place for the purpose of holding a sale and no sale takes place, either -

(a) for the reason stated in Section 177, or

(b) because the demand of the distrainer has been previously satisfied, and no intimation of such satisfaction was given by the distrainer to the said office,

a charge of one anna in the rupee shall be leviable on account of expenses, and shall be calculated on the estimated value of the distrained property :

Provided that such charge shall in no case exceed ten rupees.

**179. Charge For Expenses By Whom To Be Paid :-**

(1) If the demand of the distrainer is not satisfied until the day fixed for the sale, the charge for expenses, referred to in Section 171, Sub-section (1), and Section 178, shall be paid by the owner of the property and may be recovered by the sale of such portion thereof as may be necessary.

(2) In every other case the said charge shall be paid by the distrainer, and may be recovered by attachment and sale of the property of the distrainer under the warrant of the Collector.

### **180. Control By Collector :-**

(1) All proceedings under this Chapter by officers referred to in Section 160, Sub-section (1), shall be subject to revision by the Collector.

(2) The Collector may, with the sanction of the Board of Revenue, direct any such officer to submit periodical reports of his proceedings under this Chapter.

### **181. Procedure In Suit To Contest Demand Of Distraîner :-**

(1) In all suits instituted to contest a demand of a distraîner the distraîner must prove the arrear in the same manner as if he had himself brought a suit therefore.

(2) If the demand or any part thereof is found to be due, the Collector shall make a decree for the amount in favour of the distraîner.

### **182. Sale Of Distraîner Property In Execution Of Decree :-**

(1) If, in any suit to contest the demand of a distraîner, the demand or any portion thereof is adjudged to be due, and if a bond has not been executed under Section 163, the Collector shall send an order to the officer referred to in Section 160, Sub-section (1), authorising the sale of the distrained property.

(2) If the distraîner applies to the said officer, within five days from the receipt of such order, for the sale of the said property, such officer shall-

(a) send to the Collector, for the purpose of being put up in his office, a proclamation fixing a day for the sale of the property, which shall not be less than five or more than ten days from the date of the proclamation; and

(b) deliver a copy of the proclamation to a peon, to be put up by him in the place where the property is deposited.

(3) Sub-section (2) of Section 161 shall apply to the said proclamation.

(4) If, when on the expiration of the period fixed in the said proclamation the amount adjudged to be due and the costs of the distraint be not paid, the said officer shall proceed to sell the property or such part thereof as it may be necessary to sell in order to realise such amount and costs.

### **183. Further Proceedings In Execution Of Decree :-**

If, a sale has been made in pursuance of Section 182, any balance remains due to the distrainer, the same may be recovered by proceeding, under the decree, against the person of the judgment-debtor and against any of his property.

**184. Procedure Where Collector Considers Distraint Vexatious Or Groundless :-**

Any suit instituted to contest the demand of a distrainer, if the Collector considers that the distraint was made vexatiously or without sufficient grounds, he shall direct the release of the distrainer property and may award to the plaintiff such damages as he thinks fit.

**185. Suit By Person Claiming Property Distrainted For Rent Due By Another :-**

(1) If any person claims as his own property which has been distrainted for arrears of rent alleged to be due from another person, he may institute a suit before the Collector against the distrainer and such other person, to try the right to the property; and the provisions of this Act as to suits to contest the demand of a distrainer shall, as far as may be, apply to such suit.

(2) When any such suit is instituted, the property may be released upon security being given up to the limit of the value of the property.

(3) If the claim is dismissed, the Collector shall make an order for the sale of the property or the recovery of the value thereof, as the case may be, for the benefit of the distrainer.

(4) if the claim is upheld, the Collector shall decree the release of the distrainted property, with costs and such damages (if any) as he thinks fit.

**186. Right Of Distraint To Prevail Over Other Claims :-**

The right of a landlord to distraint property under this Chapter shall not be barred by -

- (a) any claim to such property, made by any other person, or
- (b) any order issued by any Court for the attachment or sale of such property:

Provided that, when any such property is sold under this Chapter after an order for the attachment or sale thereof has been issued

by any Court, the surplus proceeds of the sale shall not be paid under Section 171 to the owner of the property without the sanction of the Court by which the order of attachment or sale was issued.

**187. Procedure If Distrainers Right To Distrain Be Disputed**

**:-**

if, in any case in which property, has been distrained for an arrear of rent and a suit has been instituted before the Collector to contest the demand, the right to distrain for such arrear is claimed by or on behalf of any person other than the distrainer, on the ground of such other person being actually arid in good faith in the receipt of the rent of the land, such other person shall be made a party to the suit, and the question of the actual receipt of the rent by such other person before and up to the time of the commencement of the suit shall be inquired into, and the suit shall be decided according to the result of the inquiry:

Provided that the decision of the Collector shall not affect the right of either party who may have a legal title to the rent of the land, to establish his title by suit in the Civil Court if instituted within one year from the date of that decision.

**188. Suit For Damages By Person Prevented From Suing In Time To Save His Property From Sale :-**

if, in any case in which property, has been distrained for an arrear of rent and a suit has been instituted before the Collector to contest the demand, the right to distrain for such arrear is claimed by or on behalf of any person other than the distrainer, on the ground of such other person being actually arid in good faith in the receipt of the rent of the land, such other person shall be made a party to the suit, and the question of the actual receipt of the rent by such other person before and up to the time of the commencement of the suit shall be inquired into, and the suit shall be decided according to the result of the inquiry:

Provided that the decision of the Collector shall not affect the right of either party who may have a legal title to the rent of the land, to establish his title by suit in the Civil Court if instituted within one year from the date of that decision.

**189. Suit For Damages For Wrongful Acts Of Authorised Distrainer :-**



(1) in any of the following cases, namely :

- (a) if any person authorised by this Chapter to distrain property makes any distraint or sale, or cause any sale to be made, otherwise than in accordance with the provisions of this Chapter, or
- (b) if any distrained property is lost, damaged, or destroyed by reason of the distrainer not having taken proper precaution for the due keeping and preservation thereof, or
- (c) if a distraint is not immediately withdrawn as required by any provision of this Chapter,

the owner of the property may institute a suit before the Collector within three months from the date of the occurrence of the cause of action, to recover damages for any injury which he may have thereby sustained;

(2) If any illegal act is committed by any agent under colour of the exercise of the powers of distraint conferred by this Chapter, the person employing such agent shall be liable, as well as the agent himself, for any damages accruing by reason of such act.

#### **190. Suit For Damages For Distraint By Unauthorised Person :-**

If any person not authorised by this Chapter to distrain property distrains or sells or causes to be sold any property under colour of this Chapter, the owner of the property may institute a suit before the Collector, within three months from the date of the occurrence of the cause-of action, to recover damages from such person for any injury which he may have thereby sustained; and such damages may be awarded in addition to any penalty imposed in pursuance of Section 240.

#### **191. Power To Make Rules :-**

The State Government may make rules for regulating the procedure in all cases under this Chapter.

### **CHAPTER 14 JUDICIAL PROCEDURE**

#### **192. Power To Modify Code Of Civil Procedure In Its Application To Landlord And Tenant Suits :-**

(1) The State Government, may by notification in the official Gazette declare that any portions of the Code of Civil Procedure, 1908 (V of 1908) which are not expressly made applicable by this

Act shall not apply to suits and other proceedings in Revenue Courts, or shall apply to them with such modifications as the State Government may prescribe.

(2) Subject to any notifications so issued, and subject also to the other provisions of this Act, the Code of Civil Procedure, 1908 (V of 1908), shall apply to all such suits and other proceedings.

### **193. Certain Suits And Applications Cognizable Only By The Collector :-**

The following suits and applications shall be cognizable by the Collector, 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 provided in this Act, namely :

(a) all suits and applications under any portion of this Act other than Chapter XI, and

(b) all suits, by landlords and others in receipt of the rent of land, against any agent employed by them in the management of land or the collection of rent, or against sureties of such agents, for money received or accounts kept for such agents in the course of such employment, or for papers in their possession.

### **194. Special Register Of Suits :-**

The State Government may direct that all suits, or any specified class of suits, under this Act shall be registered, not in the register of civil suits kept under the Code of Civil Procedure, 1908 (V of 1908), but in such other registers as it may prescribe.

### **195. Successive Rent Suits :-**

Subject to the provisions of Rule 1 in Order XXIII in the first schedule to the Code of Civil procedure, 1908 (V of 1908), where a landlord has instituted a suit against a raiyat for the recovery of any rent of his holding, the landlord shall not institute another suit against him for the recovery of any rent of that holding until after three months from the date of the institution of the previous suit.

### **196. Agreements And Compromises :-**

(1) The provisions of Rule 3 in Order XXIII in the first Schedule to the Code of Civil Procedure, 1908 (V of 1908), shall not apply to any suit under this Act.

(2) If any suit under this Act is adjusted wholly or in part by any

lawful agreement or compromise, or if the defendant satisfies the plaintiff in respect to the whole or any part of the matter of the suit, the Court shall pass a decree in accordance with such agreement, compromise or satisfaction, so far as it relates to the suit:

Provided that no decree shall be passed in accordance with any agreement or compromise the terms of which, if they were embodied in a contract, could not be enforced under this Act.

(3) Where any agreement or compromise has been made for the purpose of settling a dispute as to the rent payable, the Court shall, in order to ascertain whether the effect of such agreement or compromise would be to enhance the rent in a manner, or to an extent not allowed by Section 34 in the case of contract, record evidence as to the rent which was legally payable immediately before the period in respect of which the dispute arose.

(4) Where the terms of any agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, the Court shall not pass a decree in accordance with such agreement or compromise unless and until it is satisfied by evidence that the statements made by the parties there to are correct.

Illustration - A, a proprietor, agrees that B, his tenant, shall be recorded as an occupancy-raiyat this affects the rights of the tenants of B. The Court must under Sub-section (4), inquire whether B is a tenure holder or a raiyat as defined in Chapter II. If the Court finds on the evidence that B is a raiyat, it may pass a decree in accordance with the agreement, but shall not do so if it finds that B is a tenure holder.

(5) A decree passed in accordance with any lawfully agreement, compromise or satisfaction shall be final so far as it relates to so much of the subject matter of the suit as dealt with by such agreement, compromise or satisfaction.

### **197. Regard To Be Had By Courts To Entries In Record-Of-Rights And Land Records :-**

In all areas for which a record-of-rights has been finally published under Chapter XI or under any other law for the time being in force, a Revenue Court shall, in all suits under this Act, have regard to the entries in such record-of-rights relating to the subject matter in dispute which may be produced before it, unless such entries have been proved by evidence to be incorrect; and, when a Revenue Court passes a decree at variance with such entries, it

shall record its reasons for so doing.

### **198. Procedure In Rent Suits :-**

The following rules shall apply to suits for the recovery of rent:

(a) Sections 68 to 72 of and Rules 1 to 13 in, Order XI and Rule 83 in Order XXI in the first Schedule to, the Code of Civil Procedure, 1908 (V of 1908), shall not apply to any such suit;

(b) the plaint shall contain, in addition to the particulars specified Rules 1 to 6 Order VII in the said Schedule, a statement in of the situation, designation, extent and boundaries of the land held by the tenant; or, where the plaintiff is unable to give the extent or boundaries, in lieu thereof, a description sufficient for identification;

(c) where the suit is for the rent of land situated within an area for which a record-of-rights has been finally published under Chapter XI or under any other law for the time being in force, the plaint shall further contain -

(1) in the case of a holding - a statement of the plots, area and rental of the tenance according to the record-of-rights, and

(2) in other cases - a description of the tenancy, sufficient for its identification, taken from the record-of-rights, unless the Court is satisfied, for reasons to be recorded in writing, that the plaintiff was prevented by any sufficient cause from furnishing such statement or extract :

Provided that, in all cases in which the Courts admit a plaint which does not contain such statement or description, the Court shall, and, in any other case, the Court may, require the Collector to supply without payment of fee, a verified or certified copy of, or extract from the record-of-rights, relating to the tenancy;

(d) where an alteration has been made in the area of the tenancy since the record-of-rights was finally published, the plaint shall further contain a statement of the rental of the original tenancy according to the record-of-rights, together with a statement showing how the amount of rent claimed in the suit has been computed :

(e) the summons shall be for the final disposal of the suit, unless the Court is of opinion that the summons should be for the settlement of issues only;

(f) the service of the summons may, if the State Government by rule, either generally, or specially for any local area, so directs, be effected by post, either in addition to, or in substitution for any other mode of service;

- (g) a written statement shall not be filed without the leave of the Court;
- (h) the rules in Rule 13 in Order XVIII in the first Schedule to the Code of Civil Procedure, 1908 (V of 1908) for recording the evidence of witnesses shall apply, whether an appeal is allowed or to;
- (i) when any account books, rent rolls, collection-papers, measurement-papers or maps have been produced by the landlord before any Court, and have been admitted in evidence in a suit pending therein, copies of, or extracts from, such documents, certified by a duly authorised officer of such Court to be true copies or extracts, may, with the permission of the Court be substituted on the record for the originals, which may then be returned to the landlord;
- and thereafter copies and extracts, so certified may be admitted in evidence in any other suit instituted in the same or any other Court unless the Court before which they are produced sees fit to require the production of the originals;
- (j) the Court may, when passing the decree, order on the oral application of the decree-holder, the execution thereof, unless it is a decree for adjustment for arrears;
- (k) notwithstanding anything contained in Rule 16 in Order XXI in the first Schedule to the Code of Civil Procedure, 1908 (V of 1908) an application for the execution of a decree for arrears obtained by a landlord shall not be made by an assignee of the decree, unless the landlord's interest in the land has become and is vested in him.

### **199. Suit By Co-Sharer Landlord For Arrears Of Rent :-**

Where a co-sharer landlord, who has instituted a suit to recover the rent due to all the co-sharer landlords in respect of an entire tenure or holding, and has made all the remaining co-sharer parties defendant to the suit, 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 of the co-sharer landlords defendants to the suit to furnish him with correct information on these points or on either of them.

such plaintiff co-sharer landlord shall be entitled to proceed with the suit for his share only of the rent;

and a decree obtained by him in a suit so framed 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.

**200. Payment Into Court Of Rent Admitted To Be Due To Third Person :-**

(1) When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff but to a third person, the Court shall refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

(2) Where such a payment is made, the Court shall forthwith cause notice of the payment to be served on the third person, and shall be the notice require him to appear before it on a specified date, and after taking evidence (if necessary) shall pass orders.

(3) If the plea is allowed, an order shall be made for payment to the third party, and, if it is not allowed, an order shall be made for payment to the plaintiff.

(4) Nothing in this Section shall affect the right of any person to recover from the plaintiff money paid to him under Sub-section (3), or to present an appeal under Section 204.

**201. Payment Into Court Of Rent Admitted To Be Due To Landlord :-**

When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads that the amount claimed is in excess of the amount due, the Court shall refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

**202. Provisions As To Payment Of Portion Of Money :-**

When a defendant is liable to pay money into Court under Section 200 or Section 201, if the Court thinks that there are sufficient reasons for so ordering, it may take cognizance of the defendant's plea on his paying into Court such reasonable portion of the money as the Court directs.

**203. Court To Grant Receipt :-**

When a defendant pays money into Court under Section 200 or 201, the Court shall give the defendant a receipt : and the receipt so given shall operate as an acquittance in the same manner and to

the same extent as if it had been given by the plaintiff or the third person, as the case may be.

#### **204. Appeals :-**

(1) Except where otherwise expressly provided in this Act, an appeal from an order or decree passed under the Act shall lie in the following manner :

Every order passed by a Collector, not being-

- (a) a judgment in a suit,
- (b) an order passed in the course of a suit and relating to the trial thereof; or
- (c) an order passed after decree and relating to the execution thereof, shall be appealable -
  - (i) to the Commissioner, or,
  - (ii) if passed by a Deputy Collector exercising the power of a Collector, to the Collector:

Provided that no second appeal shall lie to the Commissioner from an order passed by the Collector under Sub-clause (ii) of Clause (c).

(2) In suits where the subject-matter of the claim or dispute does not exceed one hundred rupees in value, and the judgment does not desire a question whether rent is payable for land or not, or a question relating to title to land or to some interest in land as between parties to the suit, the judgment of the Collector shall be final :

Provided that, if the suit be tried and decided by a Deputy Collector exercising the powers of a Collector, an appeal shall lie from the judgment of the Deputy Collector to the Collector.

(3) In suits other than those referred to in Sub-section (2), an appeal from the judgment of the Collector or Deputy Collector shall lie to the District Judge, unless the amount or value in dispute exceeds five thousand rupees, in which case the appeal shall lie to the High Court :

Provided that, a second appeal shall lie to the High Court under Order XLII in the first Schedule to the Code of Civil Procedure, 1908 (V of 1908) from any appellate decree passed by the District Judge under this Section.

(4) An appeal shall lie against any Order specified in Clause (b) or (c) of Sub-section (1) [except an Order which is not appealable under the Code of Civil Procedure, 1908 (V of 1908)] to the Court to which an appeal from the judgment in the suit would lie.

(5) Notwithstanding anything hereinbefore contained, the Collector may call for the record of any case in which any Deputy Collector has passed a decree or Order to which this Section applies, if it appears that such officer has exercised a jurisdiction not vested in him by law, or has failed to exercise jurisdiction so vested, or has acted in the exercise of his jurisdiction illegally or with material irregularity; and the Collector may pass such Order as he thinks fit. Explanation- A question as to the regularity of the proceedings in publishing or conducting a sale in execution of a decree for arrears of rent is not a question relating to title to land or to some interest in land as between parties of the suit.

**205. Deposit On Application To Set Aside Ex Parte Decree, Or For Review Of Judgment :-**

Every application for an Order under Rule 13 in Order IX in the First Schedule to the Code of Civil Procedure, 1908 (V of 1908) to set aside a decree passed ex parte, or for a review of judgment, under Section 114 of the said Code, in a suit under this Act, shall contain a statement of the injury sustained by the applicant by reason of the decree or judgment;

and no such application shall be admitted-

(a) unless the applicant has, at or before the time when the application is admitted, deposited in the Court to which the application is presented the amount, if any, which he admits to be due from him to the decree-holder or such amount as the Court may, for reasons to be recorded by it in writing, direct; or

(b) unless the Court, after considering the statement of injury, is satisfied, for reasons to be recorded by it in writing, that no such deposit is necessary.

**206. Date From Which Decree For Enhancement Takes Effect :-**

A decree for enhancement of rent under this Act, if passed in a suit instituted in the first eight months of an agricultural year, shall ordinarily take effect on the commencement of the agricultural year next following; and, if passed in a suit instituted in the last four months of the agricultural year, shall ordinarily take effect on the commencement of the agricultural year next but one following; but nothing in this Section shall prevent the Court from fixing, for special reasons, a later date from which any such decree shall take effect.



## **207. Relief Against Forfeitures :-**

(1) A suit for the ejectment of a tenant, on the ground-

(a) that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or

(b) that he has broken a condition on breach of which he is, under the terms of a contract between him and the landlord liable to ejectment,

shall not be entertained unless the landlord has served in the prescribed manner, a notice on the tenant specifying the particular misuse or breach complained of, and, where the misuse or breach is capable of remedy, requiring the tenant to remedy the same, and, in any case, to pay reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with that request.

(2) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would reasonable 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 remedy, to remedy the same.

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

(4) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this Section, pays 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.

## **208. Rights Of Ejected Raiyats In Respect Of Crops And Land Prepared For Sowing :-**

The following Rules shall apply in the case of every raiyat ejected from a holding :

(a) When the raiyat has, before the date of this ejectment, sown or planted crops in any land comprise in the holding, he shall be entitled, at the opinion of the landlords, either to retain possession of that land and to use it for the purpose of tending and gathering in the crops or to receive from the landlord the value of the crops

as estimated by the Court executing the decree for ejectment;

(b) when the raiyat has before the date of his ejectment, prepared for sowing any land comprise in his holding, but has not sown or planted crops in that land, he shall be entitled to receive from the landlord the value of the labour and capital extended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reasonable interest on that value;

(c) but a raiyat shall not be entitled to retain possession of any land or receive any sum in respect thereof under this Section where, after the commencement of proceedings by the landlord for his ejectment, he has cultivated or prepared the land contrary to local usage;

(d) if the landlord elects under this Section to allow a raiyat to retain possession of the land, the raiyat shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable.

### **209. Power For Court To Fix Fair Rent As Alternative To Ejectment :-**

When a plaintiff institutes a suit in a Civil Court for the ejectment of a trespasser, he may, if he thinks fit, claim as alternative relief that the defendant be declared liable to pay for the land in his possession a fair and equitable rent, to be determined by the Court; and the Court may grant such relief accordingly.

### **210. Application To Determine Incidents Of Tenancy :-**

(1) Subject to the provisions of Section 140, the Court having jurisdiction to determine a suit for the possession of land may, on the application of either the landlord or the tenant of the land, determine all or any of the following matters, namely :

- (a) the situation, quantity and boundaries of the land;
- (b) the name and description of the tenant thereof (if any);
- (c) the class to which he belongs, that is to say, whether he is a tenure holder, bazyaftidar, raiyat holding at fixed rates, occupancy raiyat, non-occupancy-raiyat, under-raiyat or chandnadar, 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; and
- (d) the rent payable by him at the time of the application.

(2) If, in the opinion of the Court, any of these matters cannot be

satisfactorily determined without a local inquiry, the Court may direct that a local inquiry be held under Order XXVI in the first Schedule to the Code of Civil Procedure, 1908 (V of 1908) by such Revenue Officer as the State Government may authorise in that behalf by rules made under Rule 9 in the said Order.

(3) The Order on any application under this Section shall have the effect of, and be subject to the like appeal as, a decree.

## **CHAPTER 15** SUMMARY PROCEDURE FOR THE RECOVERY OF RENTS UNDER THE BIHAR AND ORISSA PUBLIC DEMANDS RECOVERY ACT, 1914

### **211. Recovery Of Arrears Of Rent Under The Certificate Procedure In Certain Areas :-**

(1) Any landlord (other than the Government) whose land is situated in an area for which a record-of-rights has been prepared and finally published and in which such record is maintained may apply to the State Government through the Collector of the district in which his land is situated for the application of the procedure prescribed by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act IV of 1914) to the recovery of the arrears of rent which he alleges are or may accrue due to him for lands in such area.

(2) The 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 and to or vary and 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 the form prescribed, to such Revenue Officer as the State Government may appoint for this Section, to perform the functions of a Certificate Officer under the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act IV of 1914) 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 1 in Schedule II, to the said Act, 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 (VII 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 said Revenue Officer

may, in accordance with such Rules as the 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 a Revenue Court 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 a Revenue Court 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 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 amount shall be taken at the instance of the first mentioned, and at his cost and responsibility, and not otherwise.

(7) The Bihar and Orissa Public Demands Recovery Act, 1914 (B and O. Act IV of 1914) with such restrictions 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 proceedings, under this Section, institute a suit in a Revenue Court 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. and O. Act IV of 1914) no tenant shall, after the signing of any certificate against him under Sub-section (5) of this Section, institute a suit in, or apply to, a Revenue Court 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 or

collect his or their share or shares of the rent separately; and, where a Revenue 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.

## **CHAPTER 16 SALE OF ARREARS UNDER DECREE**

### **212. Passing Of Tenure Or Holding Sold In Execution Of Decree :-**

(1) Where a tenure or holding is sold in execution of-

- (a) a decree for arrears of rent due in respect thereof; or
- (b) a decree for damages under Section 186A; or
- (c) a certificate for arrears of rent signed under the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act IV of 1914),

the tenure or holding shall, subject to the provisions of Section 28, pass to the purchaser-

if such decree was obtained by-

- (i) a sole landlord; or
- (ii) the entire body of landlords; or
- (iii) one or more co-sharer landlords who has, or have, sued for the rent due to all the co-sharers in respect of the entire tenure or holding and made all the remaining co-sharers parties defendant to the suit, or

if such certificate was signed on the requisition of, or in favour of, a sole landlord or the entire body of landlords.

(2) When one or more co-sharer landlords, having obtained a decree referred to in Sub-section (1) or a decree in a suit framed under Section 199, applies or apply, for the execution of the decree by the sale of the tenure or holding, the Court shall, before proceeding to sell the tenure or holding, give notice of the application for execution to the other co-sharers.

### **213. General Powers Of Purchaser As To Avoidance Of Encumbrances :-**

Where a tenure or holding is sold in execution of a decree for arrears due in respect thereof, the purchaser shall take subject to the interests defined in this Chapter as "protected interests," but with power to annul the interests defined in this Chapter as "encumbrances" :

Provided as follows :

- (a) a registered and notified encumbrance within the meaning of this Chapter shall not be so annulled, except in the case hereinafter mentioned in that behalf;
- (b) the power to annul shall be exerciseable only in the manner by this Chapter directed.

#### **214. Protected Interests :-**

The following shall be deemed to be protected interests within the meaning of this Chapter :

- (a) any under-tenure existing from the time of the permanent settlement;
- (b) any sub-proprietary interest, bazyafti tenancy or under tenure recognized by the settlement proceedings of any current temporary settlement as a tenure at a rent fixed for the period of that settlement;
- (c) any lease of land whereon dwelling houses, manufactories or other permanent buildings have been erected, or permanent gardens, plantations, tanks, canals, places of worship or burning or burying grounds have been made;
- (d) any right of occupancy;
- (e) the right of a non-occupancy raiyat to hold for five years, at a rent fixed under Chapter VI, or under Chapter XI;
- (f) any right conferred on an occupancy-raiyat to hold at a rent which was a fair and reasonable rent at the time the right was conferred; and
- (g) any right or interest which the landlord at whose instance the tenure or holding is sold, or his predecessor-in-title, has expressly and in writing given the tenant for the time being permission to create.

#### **215. Meaning Of Encumbrance And Registered And Notified Encumbrance :-**

For the purposes of this Chapter-

- (a) the term encumbrance, used with reference to a tenancy, means any lien, sub-tenancy, easement or other right or interest created by the tenant on his tenure or holding or in limitation of his own interest therein, and not being a protected interest as defined in Section 214;
- (b) the term "registered and notified encumbrance" used with reference to a tenure or holding sold or liable to sale in execution of a decree for an arrear or rent due in respect thereof, means an

encumbrance created by a registered instrument of, which a copy has, not less than three months before the accrual of the arrear, been served on the landlord in the manner hereinafter provided;

(c) the terms arrears" and "arrears of rent shall be deemed to include interest decreed under Section 76 or damages awarded in lieu of interest under Sub-section (1) of Section 77.

### **216. Application For Sale Of Tenure Or Holding :-**

When a decree has been passed for an arrear of rent due for a tenure or holding, and the decree holder applies under Sub-section (2) of Rule 11 in Order XXI in the first Schedule to the Code of Civil Procedure, 1908 (V of 1908) for the attachment and sale of the tenure or holding in execution of the decree, he shall produce a statement showing the pargana, estate and village in which the land comprised in the tenure or holding is situate, the yearly rent payable for the same and the total amount recoverable under the decree.

### **217. Order Of Attachment And Proclamation Of Sale To Be Issued Simultaneously :-**

(1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 (V of 1908), when the decree holder makes if under the application mentioned in Section 216, the Court shall, Rule 17 in Order XXI in the first Schedule to the said Code it admits the application and Orders execution of the decree as applied for, issue simultaneously the Order of attachment and the proclamation required by Rule 66 in the said Order.

(2) The proclamation shall in addition to stating and specifying the particulars mentioned in Rule 66 in the said Order, announce-

(a) in the case of a tenure or a holding of a raiyat holding at fixed rates or of a bazyaftidar, that the tenure or holding will first be put up to auction subject to the registered and notified encumbrances, and will be sold subject to those encumbrances if the sum bid is sufficient to liquidate the amount of the decree and costs, and that otherwise it will, if the decree holder so desires, be sold on a subsequent day of which due notice will be given, with power to annul all encumbrances; and

(b) in the case of an occupancy holding, not being, the holding of a bazyaftidar, that the holding will be sold with power to annul all encumbrances.

(3) The proclamation shall, besides being made in the manner

required by Rule 67 in the said Order, be published by fixing up a copy thereof in a conspicuous place on the land comprised in the tenure or holding Ordered to be sold and shall also be published in such manner as the Board of Revenue may direct in this behalf.

(4) Notwithstanding anything contained in Rule 68 in the said Order, the sale shall not, without the consent in writing of the judgment debtor, take place until after the expiration of at least thirty days, calculated from the date on which the copy of the proclamation has been fixed upon the land comprised in the tenure or holding Ordered to be sold.

#### **218. Sale Of Tenure Or Holdings Subject To Registered And Notified Encumbrances And Effect Thereof :-**

(1) When a tenure or a holding at fixed rates or a holding of a bazyaftidar has been advertised for sale under Section 217, it shall be put up to auction subject to registered and notified encumbrances; and, if the bidding reaches a sum sufficient to liquidate the amount of the decree and costs, including the costs of sale, the tenure or holding shall be sold subject to such encumbrances.

(2) The purchaser at a sale under this Section may, in manner provided by Section 221 and not otherwise, annul any encumbrance upon the tenure or holding, not being a registered and notified encumbrance.

#### **219. Sale Of Tenure Or Holding With Power To Avoid All Encumbrances, And Effect Thereof :-**

(1) If the bidding for a tenure or a holding at fixed rates or a holding of a bazyaftidar put up to auction under Section 218 does not reach a sum sufficient to liquidate the amount of the decree and costs as aforesaid, and if the decree holder thereupon desires that the tenure or holding be sold with power to avoid all encumbrances, the officer holding the sale shall adjourn the sale and make a fresh proclamation under Rule 67 in Order XXI in the first Schedule to the Code of Civil Procedure, 1908 (V of 1908), announcing that the tenure or holding will be put up to auction and sold, with power to avoid all encumbrances, upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement; and upon that day the tenure or holding shall be put to auction and sold with power to avoid all encumbrances.



(2) The purchaser at a sale under this Section may, in manner provided by Section 21 and not otherwise, annul any encumbrance on the tenure or holding.

**220. Sale Of Occupancy Holding With Power To Avoid All Encumbrances And Effect Thereof :-**

(1) When an occupancy holding, not being the holding of a bazyaftidar, has been advertised for sale under Section 217, it shall be put up to auction and sold with power to avoid all encumbrances.

(2) The purchaser at a sale under this Section may, in manner provided by Section 221 and not otherwise, annul any encumbrance on the holding.

**221. Procedure For Annuling Encumbrances Under The Foregoing Sections :-**

(1) A purchaser having power to annul an encumbrance under any of the foregoing Sections, or under the Bihar and Orissa Public Demands Recovery Act, 1914 (Bihar and Orissa Act IV of 1914), and desiring to annul the same, may, within one year from the date of the sale or the date on which he first has notice of the encumbrance, whichever is later, present to the Collector an application, in writing, requesting him to serve on the encumbrance a notice declaring that the encumbrance is annulled.

(2) Every such application must be accompanied by such fee for the service of the notice as the Board of Revenue may fix in this behalf.

(3) When an application for service of a notice is made to the Collector in manner prescribed by this section, he shall cause the notice to be served in compliance therewith, and the encumbrance shall be deemed to be annulled from the date on which it is so served.

(4) When a tenure or holding is sold in execution of a decree (or a certificate signed under the Bihar and Orissa Public Demand Recovery Act, 1914), for arrears due in respect thereof, and there is on the tenure or holding a protected interest of the kind specified in Section 214, Clause (c), the purchaser may, if he has power under this Chapter or that Act to avoid all encumbrances, sue to enhance the rent of the land which is the subject of the protected interest. On proof that the land is held at a rent which was not at the time the lease was granted a fair rent, the Court may enhance the rent to such amount as appears to be fair and equitable.

This sub-section shall not apply to land which has been held for a term exceeding twelve years at a fixed rent equal to the rent of good areable land.

**222. Power To Direct That Occupancy Holdings Be Dealt With Under Foregoing Sections As Tenures :-**

(1) The State Government may, by notification in the official Gazette, direct the occupancy holdings or any specified class of occupancy holdings, in any local area, which are put up for sale in execution of a decree for an arrear of rent due on them, shall, before being put up with power to avoid all encumbrances, be put up subject to registered and notified encumbrances.

(2) While any such direction remains in force in respect of any local area, all occupancy holdings, or, as the case may be, occupancy holdings of the specified class, in that local area, shall, for the purposes of sale under the foregoing Sections of this Chapter, be treated in all respects as if they were tenures.

(3) Nothing in Sub-sections (1) and (2) shall apply to the holding of bazyaftidars.

**223. Rules For Disposal Of The Sale Proceeds :-**

(1) In disposing of the proceeds of a sale under this Chapter, the following Rules, instead of those prescribed by Section 73 of the Code of Civil Procedure, 1908 (V of 1908), shall be observed, that is to say-

(a) there shall first be paid to the decree holder the cost 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 these sums have been paid, there shall be paid to the decree holder therefrom any rent which may have fallen due to him in respect of the tenure or holding between the institution of the suit and the date of the sale;

(d) the balance (if any) remaining after the payment of the rent mentioned in Clause (c) shall, upon the expiration of two months from the confirmation 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 framed under Section 199 or a decree referred to in Sub-section (1)

of Section 212-

(i) payment of the amount due under such decree shall, notwithstanding anything contained in Clause (b), 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 a balance, payment of any rent which may have fallen due in respect of the tenure of 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 the 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 the other co-shearer landlords in the proportion to their respective share 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) of Sub-section (1), or the amount of any payment contemplated by proviso (i) or proviso (ii) to the said Sub-section, the Court shall determine the dispute, and the determination shall have the force of a decree.

**224. Tenure Or Holding To Be Released From Attachment Only On Payment Into Court Of Amount Of Decree, With Costs, Or On Confession Of Satisfaction By Decree Holder :-**

(1) Rules 58 to 63 and 89 in Order XXI in the first Schedule to the Code of Civil Procedure, 1908 (V of 1908), shall not apply to a tenure or holding attached in execution of a decree for arrears due thereon.

(2) When an Order for the sale of a tenure or holding in execution of such decree has been made, the tenure or holding shall not be released from attachment unless, before it is knocked down to the auction purchaser, the amount of the decree, including the costs decreed, together with the cost incurred in Order to be sale, is paid into Court, or the decree holder makes an application or the release of the tenure or holding on the ground that the decree has been satisfied out of Court.

(3) The judgment debtor, or any person having in the tenure or holding any interest voidable on the sale, may pay money into Court under this Section.

**225. Amount Paid Into Court To Prevent Sale To Be, In Certain Cases A Mortgage Debt On The Tenure Or Holding :-**

(1) When any person having, in a tenure or holding advertised for sale under this Chapter or in execution of a certificate for arrears of rent due in respect thereof, signed under the Bihar and Orissa Public Demands Recovery Act, 1914 (Bihar and Orissa Act IV of 1914), an interest which would be voidable upon the sale, pays into Court the amount requisite to prevent the sale-

(a) the amount so paid by him shall be deemed to be a debt bearing interest at twelve-and-a-half per centum per annum and secured by a mortgage of the tenure or holding to him;

(b) his mortgage shall take priority of every other charge on the tenure or holding other than a charge for arrear of rent; and

(c) he shall be entitled to possession of the tenure or holding as mortgage of the tenant, and to retain possession of it as such until the debt with the interest due thereon, has been discharged.

(2) Nothing in this Section shall affect any other remedy to which any such person would be entitled.

### **226. Inferior Tenant Paying Into Court May Deduct From Rent :-**

When a tenure or holding is advertised for sale-

(a) under this Chapter, in execution of a decree against a superior tenant defaulting, or

(b) in execution of a certificate, signed under the Bihar and Orissa Public Demands Recovery Act, 1914 (Bihar and Orissa Act IV of 1914), for arrears of rent due in respect of the tenure or holding from a superior tenant defaulting, and an inferior tenant, whose interest would be voidable upon the sale, pays money into Court in Order to prevent the sale, he may, in addition to any other remedy for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord; and that landlord, if he is not the defaulter, may in like manner deduct the amount so deducted from any rent payable to him to his immediate landlord, and so on until the defaulter is reached.

### **227. Decree Holder May Bid At Sale : Judgment Debtor May Not :-**

(1) Notwithstanding anything contained in Rule 72 in Order XXI in the first Schedule to the Code of Civil Procedure, 1908 (V of 1908), the holder of a decree in execution of which a tenure or holding is sold under this Chapter may, without the permission of the Court, bid for or purchase the tenure or holding.

(2) The judgment-debtor shall not bid for or purchase a tenure or holding so sold.

(3) When a judgment-debtor purchase by himself or through another person a tenure or holding so sold, the Court may, if it thinks fit, on the application of the decree holder or any other person interested in the sale, by Order set aside the sale; and the Costs of the application and Order, and any deficiency of price which may happen on the resale, and all expenses attending it, shall be paid by the judgment-debtor.

### **228. Application By Judgment-Debtor To Set Aside Sale :-**

(1) Rules 89 and 90 of Order XXI in the First Schedule to the Code of Civil Procedure, 1908 (V of 1908), shall not apply in cases where a tenure or holding has been sold for arrears of rent due thereon, but in such cases the judgment debtor, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Court to set aside the sale, on his depositing-

(a) for payment to the decree holder, the amount recoverable under the decree up to the date when the deposit is made, with costs;

(b) for payment to the auction purchaser, as penalty a sum equal to five per cent of the purchase money, but not less than one rupee.

(2) Where a tenure or holding has been sold for arrears of rent due thereon, the decree holder, the judgment-debtor or any person whose interests are affected by the sale, may, at any time within three months from the date of the sale, apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting the sale :

Provided as follows :

(a) no sale shall be set aside on any such ground unless the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud; and

(b) no application made by a judgment debtor or any person whose interests are affected by the sale under this sub-section shall be allowed unless the applicant either deposits the amount recoverable from him in execution of the decree or satisfies the Court for reasons to be recorded by it in writing, that no such deposit is necessary.

(3) Where a person makes an application under Sub-section (2) or

setting aside the sale of his tenure or holding, he shall not, unless he withdraws that application, be entitled to make or prosecute an application made under Sub-section (1).

(4) Rule 91 of Order XXI in the First Schedule to the Code of Civil Procedure, 1908 (V of 1908) shall not apply to any sale under this Chapter.

(5) An appeal shall lie against an Order setting aside or refusing to set aside sale :

Provided that where the Court has refused to set aside the sale on the application of the judgment debtor or any person whose interests are affected by the sale and the amount recoverable in execution of the decree is not in deposit in Court, no such appeal shall be admitted unless the applicant deposits such amount in Court.

**228A.** Sale When To Become Absolute Or Be Set Aside And Return Of Purchase Money In Certain Cases :-

(1) Where no application is made under Sub-section (1) of Section 228 within thirty days from the date of sale or where such application is made and disallowed, the Court shall make an Order confirming the sale and thereupon the sale shall become absolute.

(2) Where such application is made and allowed, and where in the case of an application under Sub-section (1) of Section 228 the deposit required by the sub-section is made thirty days from the date of sale, the Court shall make an Order setting aside the sale :  
Provided that no Order shall be made unless notice of the application has been given to all persons affected thereby.

(3) Where a sale is set aside under this Section, the purchaser shall be entitled to an Order against any person to whom the purchase money has been paid for its re-payment with or without interest as the Court may direct.

(4) No suit to set aside an Order made under this Section shall be brought by any person against whom such Order is made.

(5) Notwithstanding anything contained in this Section, an application may be made under Sub-section (2) of Section 228 to set aside the sale, and where such application is allowed the Order made under Sub-section (1) confirming the sale shall be deemed to be cancelled.

**229.** Registration Of Certain Instruments Creating Encumbrance :-

Notwithstanding anything contained in Part IV of the Indian Registration Act, 1908 (XVI of 1908) an instrument creating an encumbrance upon any tenure or holding, which has been executed before the commencement of this Act and is not required by Section 17 of the said Registration Act to be registered, shall be accepted for registration under that Act if it is presented for that purpose to the proper officer within one year from the commencement of this Act.

### **230. Notifications Of Encumbrances To Landlord :-**

Every officer who has, whether before or after the commencement of this Act, registered an instrument executed by a tenant of a tenure or holding and creating an encumbrance on the tenure or holding, shall at the request of tenant or of the person in whose favour the encumbrance is created, and on payment by him of such fee as the State Government may fix in this behalf notify the encumbrance to the landlord by causing a copy of the instrument to be served on him in the prescribed manner.

### **231. Power To Create Encumbrances Extended :-**

Nothing contained in this Chapter shall be deemed to enable a person to create an encumbrance which he could not otherwise lawfully create.

## **CHAPTER 17 CONTRACT AND CUSTOM**

### **232. Restrictions On Exclusion Of Act By Agreement :-**

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

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

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

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

(d) shall take away or limit the right of a tenant as provided by this Act, to make improvements and claim compensation for them.

(2) Nothing in any contract made between a landlord and a tenant within a period of six years immediately preceding the commencement of this Act, shall prevent a raiyat from acquiring, in accordance with this Act, an occupancy right in land.

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

- (a) prevent a raiyat from acquiring, in accordance with this Act, an occupancy-right in land;
- (b) take away or limit the right of an occupancy raiyat to use land as provided by Sections 27 and 27A;
- (c) take away the right of a raiyat to surrender his holding in accordance with Section 97;
- (d) take away the right of a raiyat to transfer or bequeath his holding in accordance with custom or local usage;
- (e) take away the right of an occupancy raiyat to sub-let subject to, and in accordance with the provisions of this Act;
- (f) take away the right of a raiyat to apply for a reduction of rent under Section 45 or Section 60;
- (g) take away the right of a landlord or an occupancy raiyat to apply for a commutation of rent under Section 47; or
- (h) affect the provisions of Section 76, relating to interest payable on arrears of money rent;

Provided as follows :

- (i) nothing in this section shall affect the terms or conditions of a lease granted bona fide for the reclamation of waste land, except that, where, on or after the expiration of the terms created by the lease, the lessee would, under Chapter V, be entitled to an occupancy right in the land comprised in the lease, nothing in the lease shall prevent him from acquiring that right;
- (ii) when a landlord has reclaimed waste land by his own servants or hired labourers, and subsequently lets the same or a part thereof to a raiyat, nothing in this Act shall affect the terms of any contract whereby a raiyat is prevented from acquiring an occupancy right in the land or part during a period of thirty years from the date on which the land or part is first let to a raiyat;
- (iii) nothing in this Section shall affect the terms or conditions of any contract for the temporary cultivation of horticultural or orchard land with agricultural crops.

Explanation-The expression "horticultural land", as used in proviso (iii), means garden land, in the occupation of a proprietor or permanent tenure-holder, which is used bona fide for the cultivation of flowers or vegetable or both, grown for the personal use of such proprietor or permanent tenure-holder and his family, and not primarily for profit or sale.

### **233. Permanent Mukarrari Leases :-**



Nothing in this Act shall be deemed to prevent a proprietor or a holder of a permanent tenure in a permanently settled area from granting a permanent mukarrari lease on any terms agreed on between him and his tenant.

### **234. Utbandi, Char And Daira Lands :-**

(1) Notwithstanding anything in this Act, a raiyat-

(a) who, in any part of the country where the custom of utbandi/prevails, holds land ordinarily let under that custom and for the time being let under that custom, or

(b) who holds land of the kind known as char or diara,

Shall not acquired a right of occupancy-

in case (a), in land ordinarily held under the custom of utbandi and for the time being held under that custom, or

in case (b) in the char or diara land,

until he has held the land in question for twelve continuous years; and, until he acquires a right of occupancy in the land, he shall be liable to pay such rent for this holding as may be agreed on between him and his landlord.

(2) Chapter VI shall not apply to raiyats holding land under the custom of utbandi in respect of land held by them under that custom.

(3) The Collector may, on the application of either the landlord or the tenant, or on a reference from the Revenue Court, declare that any land has ceased to be char or diara land within the meaning of this Section; and thereupon all the provisions of the Act shall apply to the land.

### **235. Saving As To Service-Tenures :-**

(1) When any land is held as a ghatwali or other service tenure and the-holder of such tenure ceases to perform the service for any reason whatsoever he shall on an application filed either by a landlord or by the holder of such tenure be liable to pay such rent in cash for the use and occupation of the land, as maybe determined by the Collector. Upon such determination of the cash-rent the incident of the said tenure shall be regulated by the provisions of this Act applicable to land held by an occupancy raiyat notwithstanding anything contained thereunder:

Provided that if the service is rendered to a religious or charitable institution and not to a person or a family; or if the service is for

the public in general, or for the Government the holder of such a service tenure shall not have the benefit of this Section.

(2) In determining the rent, the Collector shall be guided by the same principles as are provided for determination of fair and reasonable rent under this Act.

(3) Any suit for the ejectment of any person holding a service tenure instituted before the commencement of this Act, or any execution proceeding arising therefrom, shall be disposed of as if Section 235 of the Orissa Tenancy Act, 1913 (B. and O. Act 11 of 1913), as amended by this Act, had been in force at the time of the institution of the suit in the Court of the first instance.

Explanation 1- Any person who is recorded a jagirdar in the record-of-rights of the last settlement shall be deemed as a holder of service tenure.

Explanation 2- Nothing provided here would affect the rights of any person who has already acquired right of permanent tenancy under the holder of a service tenure.

### **236. Homesteads :-**

(1) Notwithstanding anything in this Act, the incidents of tenancy of any tenant, including the holder of a service tenure, in respect of the homestead in which such tenant ordinarily resides, shall be regulated by the provisions of this Act, applicable to land held by an occupancy raiyat:

Provided that when a homestead is held as a service tenure or a part thereof and the holder of such tenure ceases to perform the service, he shall be liable to pay such rent for the occupation of the homestead as may be determined by the Collector on an application filed either by the landlord or by the holder of such tenure.

Explanation-A Chandnadar is also a tenant within the meaning to this Sub-section.

(2) Save as otherwise expressly provided in this Act the incidents of tenancy of a Chandnadar in respect of that portion of his land which is not the homestead in which he ordinarily resides, shall be regulated by local custom or usage and his rent shall be liable to re-assessment on each revision of a land revenue settlement.

### **237. 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.

illustrations

(1) The custom or usage whereby the right of a non-occupancy raiyat is heritable is not inconsistent with and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage, accordingly, wherever it exists, will not be affected by this Act.

(2) The custom or usage, that an under-raiyat should, under certain circumstances, acquire a right of occupancy is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage, accordingly, wherever it exists, will not be affected by this Act.

## **CHAPTER 18 LIMITATION**

### **238. Limitation In Suits, Appeals And Applications In Schedule Iii :-**

(1) The suite, appeals and applications specified in Schedule III shall be instituted and made within the time prescribed in that Schedule for them respectively; and every such suit or appeal instituted, or application made, after the period of limitation so prescribed, shall be dismissed, although limitation has not been pleaded.

(2) Nothing in this Section shall receive the right to institute any suit or appear or make any application which would have been barred by limitation if it had been instituted or made immediately before the commencement of this Act.

### **239. Portions Of The Indian Limitation Act Not Applicable To Such Suits, Etc. :-**

(1) Sections 6 to 9 of the Indian Limitation Act, 1908 (IX of 1908), shall not apply to the suits and applications mentioned in Section 238.

(2) Subject to the provisions of this Chapter, the provisions of the Indian Limitation Act, 1908 (IX of 1908); shall apply to all suits, appeals and applications mentioned in Section 238.

## **CHAPTER 19 SUPPLEMENTAL**

### **240. Penalties :-**

(1) If any person, otherwise than in accordance with this Act or some other enactment for the time being, in force,-

(a) distrains or attempts to distrain the produce of a tenants holding, or

(b) resists a distraint duly made under this Act, or forcibly or clandestinely removes any property duly distrained under this Act, or

(c) except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gathering, storing, removing or otherwise dealing with any produce of a holding.

he shall be deemed to have committed criminal trespass within the meaning of the Indian Penal Code (XLV of 1860).

(2) Any person who abets, within the meaning of the Indian Penal Code, (XLV of 1860) the doing of an act mentioned in Sub-section (1) shall be deemed to have abetted the commission of criminal trespass within the meaning of that Code.

#### **241. Damages For Denial Of Landlords Title :-**

(1) When, in any suit under this Act, the tenant renounces his character as tenant of the landlord by setting up without reasonable or probable cause title in a third person or himself, the Court may pass a decree in favour of the landlord for such amount of damages, not exceeding ten times the amount of the annual rent payable by the tenant, as it may consider to be just.

(2) The amount of damages decreed under Sub-section (1), together with any interest falling due thereon, shall, subject to the landlords charge for rent, be a first charge on the tenure or holding of the tenant; and the landlord may execute such decree for damages and interest, either as a decree for a sum of money or, subject to the provisions of Section 242, any of the modes in which a decree for rent may be executed.

#### **242. Power Of Landlord To Act Through Agent :-**

(1) Any appearance, application or act in, before or to any Court or authority, required or authorized by this Act to be made or done by a landlord, may, unless the Court or authority otherwise directs, be made or done also by an agent empowered in this behalf by a written authority under the hand of the landlord.

(2) Every notice required by this Act to be served on, or given to, a landlord shall, if served on or given to, an agent empowered as aforesaid to accept service of or receive the same on behalf of the

landlord, be as effectual for the purposes of this Act as if it had been served on, or given to, the landlord in person.

(3) Every document required by this Act to be signed or certified by a landlord, except an instrument appointing or authorizing an agent, may be signed or certified by an agent of the landlord authorized in writing in that behalf.

### **243. Joint Landlords To Act Collectively Or By Common Agent :-**

Where two or more persons are joint landlords, anything which the landlord is under this Act required or authorised to do must be done either by both or all those persons acting together, or by an agent authorized to act on behalf of both or all of them.

### **244. Procedure In Suits By Joint Landlord :-**

Notwithstanding anything contained in this Act, every suit under this Act instituted by-

- (a) a sole landlord,
- (b) the entire body of landlords, or
- (c) one or more co-sharer landlord.

shall be subject to the provisions of Sections 192 to 194;

and to every decree referred to in Sub-section (1) of Section 212, and to every decree in a suit framed under Section 199, the provisions of Chapter XIV shall, so far as may be practicable, be applicable.

### **245. Power To Make Rules Regarding Procedure, Powers Of Officers And Service Of Notices :-**

The State Government may, by notification in the official Gazette, make Rules.

(1) to regulate the procedure to be followed by Revenue Officers in the discharge of any duty imposed, or the exercise of any power conferred, upon them by or under this Act, and may by such Rules confer upon any such officer-

- (a) any 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 (Bengal Act V 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;

(2) to prescribe the officers to whom applications should be made under Section 160 for the sale of crops or products distrained under Chapter XIII; and

(3) to prescribe the forms to be used, and the mode of service of notices issued, under this Act, where no form or mode is prescribed by this or any other Act.

#### **246. Publication Of Rules In Draft :-**

All powers conferred by this Act for making Rules are subject to the condition that the Rules be made after previous publication.

#### **247. Saving As To Tenancies Held In Estate Which Have Never Been Permanently Settled :-**

Where the area comprised in a tenancy is situated in an estate which has never been permanently settled, nothing in this Act shall prevent the enhancement of the rent upon the expiration of a temporary settlement of the land revenue, unless the right to hold beyond the term of the settlement at a particular rate of rent has been expressly recognised in settlement proceedings by a revenue authority empowered by the Government to make definitely or confirm settlement.

#### **248. Power To Alter Rent In Case Of New Assessment Of Land Revenue :-**

When a landlord grants a lease, or makes any other contract, purporting to entitle the tenant of land not included in an area permanently settled to hold that land free of rent or a particular rent, and while the lease or contract is in force-

(a) land revenue is for the first time made payable in respect of the land, or;

(b) land revenue having been previously payable in respect of it, a fresh settlement of land revenue is made,

a Revenue Officer may, notwithstanding anything in the contract between the parties by order, on the application of the landlord or of the tenant, or of his own motion, fix a fair and equitable rent for the land in accordance with the provisions of this Act.

#### **249. Remission And Suspension Of Rent :-**

(1) Whenever from any cause the payment of the whole or any part of the land revenue payable in respect of any land, not included in

an area which has been permanently settled, is remitted or suspended, a Revenue Officer may, by general or special Order, remit or suspended, as the case may be, the payment of the rent of that land to an amount which may bear the same proportion to the whole of the rent payable in respect of the land as the land revenue of which the payment has been remitted or suspended bears to the whole of the land revenue payable in respect of the land, and may distribute the amount so remitted or suspended amongst the tenants holding such land as may seem to him to be equitable, having regard to the effect on their tenures or holdings of the cause which has led to the remission or suspension of the land revenue :

Provided that where the rent is taken by actual division of the produce, no portion of it shall be suspended under this Section.

(2) An Order passed under Sub-section (1) shall not be liable to be contested by suit in any Court.

(3) No suit shall lie for the recovery of any rent of which the payment has been remitted, or during the period of suspension, of any rent of which the payment has been suspended; and, so long as a suit does not lie, such rent shall not be legally payable.

(4) Where the payment of rent has been suspended, the period of suspension shall be excluded in the computation of the period of limitation provided for bringing a suit for the recovery of the rent.

(5) The provisions of this Section relating to the remission and suspension of the payment of rent may be applied, as far as may be, to land of which the land revenue has been wholly or in part released, compounded for or redeemed in any case in which, if the land revenue in respect of the land had not been released, compounded for or redeemed the whole or any part of it might, in the opinion of the Revenue Officer, have been remitted or suspended.

## **250. Recovery Of Certain Dues :-**

The provisions of this Act applicable to arrears of rent and suits and proceedings for the recovery thereof, shall, as far as may be, apply to anything payable or deliverable in respect of-

- (a) any sub-proprietary interest,
- (b) any nij-jote, khamar, khudkast or nij-chas land held by co-sharers;
- (c) any land held by co-sharers, under the provisions of Sub-sections

(2) and (3) of Section 26;

(d) any rights of pasturage, forest rights, rights over fisheries and the like; and

(e) any registration fees prescribed in Sections 14, 15, 16 or 31B.

**251. Tenant Not Enabled By Act To Violate Conditions Binding On Landlord :-**

Where a proprietor, sub-proprietor or permanent tenure holder holds his estate, Sub-proprietary interest or tenure subject to the observance of any specified Rule or condition, nothing in this Act shall entitle any person occupying land within the estate, Sub-proprietary interest or tenure to do any act which involves a violation of that Rule or condition.

**252. Savings For 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;

(b) any enactment regulating the procedure for the realisation of rents in estates belonging to the Government or under the management of the Court of Wards or of the revenue authorities;

(c) any enactment relating to the avoidance of tenancies and encumbrances by a sale for arrears of the Government revenue;

(d) any enactment relating to the partition of revenue-paying estates;

(e) any enactment relating to patni tenures, in so far as it relates to those tenures; or

(f) any other special or local law not repealed either expressly or by necessary implication by this Act.

**SCHEDULE 1**

**SCHEDULE I**

Enactments repealed

[See Section 2]

Number and Year 1	Short title 2	Extent of repeal 3
<b>PART I Bengal Regulations</b>		
VIII of 1793	The Bengal Decennial Settlement Regulation, 1793	Sections 51, 52, 53, 54, 55, 64 and 65, and so much of Section 34 as relates to Kanungos.
V of 1812	The Bengal Land-revenue Sales	Sections 2. 3. 4. 26



	Regulation, 1812	and 27
VII of 1822	The Bengal Land-revenue Settlement Regulation, 1822	Section 33, Clause Third.
XI of 1825	The Bengal Alluvion and Diluvion Regulation, 1825	In Clause 1 of Section 4, from the words "nor, if annexed to a subordinate tenure" to the end of the clause.
XIII of 1825	The Bengal Land-revenue Settlement (Resumed Kanungos and Revenue-free Lands) Regulation, 1825	Section 2 and 3.
<b>PART II Acts of the Governor-General of India-in-Council</b>		
X of 1859	The Bengal Rent Act, 1859	The whole.
VII of 1885	The Bengal Tenancy Act, 1885	The whole.
<b>PART III Bengal Acts</b>		
V of 1862	The Bengal Rent Act, 1862	The whole.
VIII of 1865	The Bengal Rent Recovery (Under-tenures) Act, 1865	The whole excepting Section 3.
IV of 1867	The Bengal Rent (Appeals) Act, 1867	The whole.
VIII of 1879	The Bengal Rent Settlement Act, 1879	The whole.
III of 1898	The Bengal Tenancy (Amendment) Act, 1898	The whole.
I of 1907	The Bengal Tenancy (Amendment) Act, 1907	The whole.

## **SCHEDULE 2**

### **SCHEDULE II**

Forms of Receipt and Account

[See Sections 65 and 66]

FORM OF RECEIPT (LANDLORDS' PORTION)		FORM OF RECEIPT (TENANT'S PORTION)	
Name of village ..... Receipt No .....		Name of village ..... Receipt No. ....	
Tauzi No ..... Name of landlord....		Tauzi No..... Name of landlord.....	
Name of tenant .....		Name of tenant .....	
Paying money rent	Paying produce rent	Paying money rent	Paying produce rent
Area of tenancy.....		Area of tenancy .....	

Remarks					Remarks				
Year	money Rent	Road and Public	Quality of produce	Here enter mutarfa	Year	Money rent	Road and public	Work cesses mutarfa,	Quality of produce

		Work Ceases	etc.)	interest					Here enter interest. etc.)
Rs. a.p.		Rs. a. p.			Rs. a.p.		Rs. a.p.		
Annual demand					Annual demand				
Arrears of .....					Arrears of .....				
Total demand					Total demand				

Details of payment		Details of payment	
Year	Kist	Year	Kist
Amount paid for		Amount paid for	
Ditto		Ditto	
Ditto		Ditto	
Total paid		Total paid	
By whom paid.....		By whom paid.....	
Date of payment.....	Signature of the landlord or his agent	Date of payment.....	Signature of the landlord or his agent
Notes-1. When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.		Notes-1. When a tenant makes a payment on account of rent, he may declare the year or the year and instalment to which he wishes the payment to be credited, and the payment shall be credited accordingly.	
2. If he does not make any such declaration, the payment may be credited to the account of such year and instalment as the landlord thinks fit (see Section 64 of the Orissa Tenancy Act, 1913).		2. If he does not make any such declaration, the payment may be credited to the account of such year and instalment.as the landlord thinks fit (see Section 64 of the Orissa Tenancy Act, 1913).	
3. Arrear, current and advance payments should be shown separately under the details of payment, thus- 1307 (arrear) 1308 (current) 1309 (advance)		3. Arrear, current and advance payments should be shown separately under the details of payment, thus- 1307 (arrear) 1308 (current) 1309 (advance)	
4. A separate receipt should be given for each separate tenure or holding.		4. A separate receipt should be given for each separate tenure or holding.	

FORM OF ACCOUNT	FORM OF ACCOUNT
1. Year	1. Year
2. Tenants's name	2. Tenants's name
3. Particulars of holding (area, rent.	3. Particulars of holding (area, rent.

Particulars of Holding (Area, Rent, etc.)				Particulars of Holding (Area, Rent, etc.)			
Acres	Rate		Rs. a.p.	Acres	Rate		Rs. a.p.
Nakdi				Nakdi			
Government cesses	Acres	Maunds	Rs. a.p.	Government cesses	Acres	Maunds	Rs.a.p.
Bhaoli				Bhaoli			
Jalkar				Jalkar			
Banker				Banker			
Phalkar	Maunds	Rs. a.p.		Phalkar	Maunds	Rs. a.p.	
4. Demand of the year				4. Demand of the year			
5. Balace of former years (Bakaya)		Rs. a.p.		5. Balace of former years (Bakaya)		Rs. a.p.	
6. Total demand (current and arrear)				6. Total demand (current and arrear)			
7. Paid each on account of		Current demand		7. Paid each on account of		Current demand	
Arrear demand				Arrear demand			
	Maunds				Maunds		
8. paid in kind		Rs. a.p.		8. paid in kind		Rs. a.p.	
9. Balance outstanding at end of year				9. Balance outstanding at end of year			
10. Singnature of the landlord or his authorized agent.				10. Singnature of the landlord or his authorized agent.			

### **SCHEDULE 3**

#### **SCHEDULE III**

#### **Limitation**

[See Section 238]

Description of suit, appeal or application	Period of limitation	Time from which period begins to turn
1	2	3
<b>PART I Suits</b>		
1. (1)To eject any tenure holder or raiyat on account of any breach of a condition in respect of which there is a contract expressly providing that ejectment shall be the penalty of such breach	One year	The date of the breach.
(2) To eject a non-occupancy raiyat on the ground of the expiration of the term of his lease	Six months	The expiration of the term.
2. For the recovery of arrear of rent, in a suit brought by-		
(1) a sole landlord		

(2) the entire body of landlords; or		
(3) one or more co-sharer landlords-		
(a) when the arrear fell due before a deposit was made under Section 70 on account of the rent of the same holding	Six months	The date of the service of notice of the deposit.
(b) in other cases-		
(i) where money-rent is paid	Three years	The last day of the agricultural year in which the arrear fell due.
(ii) where rent is paid in kind	One year	Ditto
3. To recover possession of land claimed by the Plaintiff as a raiyat or an under-raiyat	Two years	The date of dispossession.
4. Under Section 193(b) of this Act.	Two years	The date of the determination of the agency.
<b>PART II Appeals</b>		
5. From any decree or Order under any portion of this Act except Chapter XI, to the Collector	Thirty days	The date of the decree or Order appealed against
6. From any decree or Order under this Act to the Court of a District Judge or Special Judge	Thirty days	The date of the decree or Order appealed against
7. From any decree or Order of a Collector under this Act to the Commissioner	Thirty days	The date of the decree or Order appealed against
<b>PART III Applications</b>		
8. For the execution of a decree or Order made in a suit under this Act or any enactment repealed by this Act, not being a decree for a sum of money exceeding Rs. 500, exclusive of any interest which may have accrued after decree upon the sum decreed, but inclusive of the costs of executing such decree; except where the judgment-debtor has by fraud or force prevented the execution of decree, in which case the period of limitation shall be governed by the provisions of the Indian Limitation Act, IX of 1908.	Three years	(a) (1) The date of the decree or Order; or (b) (2) Where there has been an appeal, the date of the final decree or Order of the Appellate Court; or (c) (3) Where there has been a review of judgment, the date of the decision passed on the review.