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L.L.B Part- 3rd

Subject- Bihar Tenancy Act

Paper-4th

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Topic-Discussion and Limitations of the law relating to Enhancement of rent of a Tenure holder.

Introduction-

Tenure-holders

Enhancement of rent

1) Tenure held since Permanent Settlement liable to enhancement only in certain cases. - Where a tenure 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 affording it.

2) Limitations 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 10 per cent 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 predecessors-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.

3) Power to order progressive enhancement. - If it thinks that an immediate increase of rent would produce hardship, the Court may direct that the enhancement shall take effect gradually at such times and by such instalments extending over a period not exceeding ten years as the Court may fix in this behalf.

4) 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 and for the purposes of this section, if an order for gradual enhancement of such rent has been made by a Court in accordance with the provisions of section 8, the full rent fixed by such order shall be deemed to have come into effect from the date of such order.

5) 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.

6) 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.

7) 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 of 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.

8) 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 village or 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 wholly or partly 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.

9) Rules as to enhancement on ground 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 enquiry be held under Order 26 in Schedule I to, and section 78 of, the Code of Civil Procedure, 1908, by such Revenue-officer as the State Government may authorise in that behalf by rules made under Rule 9 in Order 26 in Schedule I to the said Code;
- (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 proved 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 cause (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.