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L.L.B Part- 3rd

Subject- Bihar Tenancy Act

Paper- 4th

Date-07/06/2020

Topic- Scope for Enhancement of Rent.

Introduction- 1. A certain profit in money, provisions, chattels, or labor, issuing out of lands and tenements in retribution for the use. 2. A rent somewhat resembles an annuity, their difference consists in the fact that the former issues out of lands, and the latter is a mere personal charge. 3. At common law there were three kinds of rents; namely, rent-service, rent-charge, and rent-see. When the tenant held his land by fealty or other corporeal service, and a certain rent, this was called rent-service; a right of distress was inseparably incident to this rent. 4. A rent-charge is when the rent is created by deed and the fee granted; and as there is no fealty annexed to such a grant of rent, the right of distress is not incident; and it requires an express power of distress to be annexed to the grant, which gives it the name of a rent-charge, because the lands are, by the deed, charged with a distress. 5. Rent-see, or a dry or barren rent, was rent reserved by deed, without a clause of distress, and in a case in which the owner of the rent had no future interest or reversion in the land, he was driven for a remedy to a writ of annuity or writ of assize.

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) 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 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.

Other incidents of tenures

5) 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 is made after the commencement of this Act, the condition is consistent with the provisions of this Act.

6) 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.

7) Voluntary transfer of permanent tenure.— (1) A transfer of a permanent tenure by sale, gift or mortgage (other than a transfer by sale in execution of a decree or by summary sale under any law relating to patni or other tenures) can be made only by a registered instrument.

(2) A registering officer shall not accept for registration any instrument purporting or operating to transfer by sale, gift or usufructuary mortgage a permanent tenure in favour of any person other than the sole landlord of such tenure unless there is paid to him, in addition to any fees payable under the Act for the time being in force for the registration of documents, a process-fee of the prescribed amount and there is filed in the prescribed manner with the instrument a notice of transfer in the prescribed form for service thereof on the landlord or his common agent, if any.

(3) When any such instrument is admitted to registration, the registering officer shall cause the notice of transfer referred to in sub-section (2) to be served on the landlord named in the notice or his common agent, if any, in the prescribed manner.

(4) Omitted

8) Transfer of permanent tenure by sale in execution of decree other than decree for rent.— (1) When a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, or when a mortgage of a permanent tenure, other than an usufructuary mortgage thereof, is foreclosed, the Court shall, before confirming the sale under Rule 92 of Order XXI in Schedule I to the Code of Civil Procedure, 1908 or making a decree or order absolute for the foreclosure, require the purchaser or mortgagee to pay into Court such process fee as may be prescribed and also to file in the prescribed manner in the Court a notice of the sale or final foreclosure in the prescribed form for service thereof on the landlord or his common agent, if any.

(2) When the sale has been confirmed or the decree or order absolute for foreclosure has been made, the Court shall cause the notice referred to in sub-section (1) to be served on the landlord named in the notice or his common agent, if any, in the prescribed manner.

9) Transfer of permanent tenure by sale in execution of decree for rent.— Repealed in Western Bengal by s. 2 of the Bengal Tenancy (Amendment) Act, 1907 (Bengal Act No. 1 of 1907), and in Eastern Bengal by s. 2 of the Eastern Bengal and Assam Tenancy Amendment Act, 1908 (E. B. & A. Act No. 1 of 1908).

10) Succession to permanent tenure.— When a succession to a permanent tenure takes place, the person succeeding shall give notice of the succession to the landlord or his common agent if any, in the prescribed form within six months from the date of succession, in addition to or substitution of any other mode of service, in the manner referred to in sub-section (3) of section 12 :

Provided that where, at the instance of the person succeeding, mutation is made in the rent-roll of the landlord within six months of the succession, the person succeeding shall not be required to give notice under this section.

11) Bar to recovery of rent, pending notice of succession.— A person becoming entitled to a permanent tenure by succession shall not be entitled to recover by suit or other proceeding any rent payable to him as the holder of the tenure, until the duties imposed upon him by section 15 have been performed.

11)A. Interpretation.— In sections 13, 15 and 16 the words "persons succeeding", "transferee" "purchaser", "mortgagee" and "person becoming entitled to a permanent tenure by succession" include the successors-in interest of such persons, but do not include the landlord where he is the sole landlord.

12) Transfer of, and succession to, share in permanent tenure.— Subject to the provisions of section 88, sections 12, 13, 15 16 and 16A shall apply to the transfer of, or succession to, a share in a permanent tenure.