

## Bihar Tenancy Act

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L.L.B Part- 3<sup>rd</sup>

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**Topic- State the rules regarding enhancement of rent, on the ground of rising price, on the ground of landlord's improvement and on the ground of increase in productive powers due to Fluvial action.**

#### Description-

#### Enhancement of rent

**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.

**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.

**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

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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.

**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.

**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;

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- (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.

### **Rules as to enhancement on ground of rising price. –**

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 therefor.

### **Rules as to enhancement on the ground of landlord's improvement.-**

(1) Where an enhancement is claimed on the ground of a landlord's 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 reconsideration in the event of the improvement not producing or ceasing to produce the estimated effect.

### **Rules as to enhancement on ground of increase in productive powers due to Fluvial action. –**

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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.

**The End**