

Bihar Tenancy Act

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Topic- Rights of an Occupancy raiyat in respect of use of land and trees held by him.

Introduction –

Occupancy-raiyat

General

16. Continuance of existing occupancy rights - [(1) Every 'Raiyat', who immediately before the commencement of this Act, has by the operation of any enactment or by local custom or usage or otherwise, a right of occupancy in any land, shall when this Act comes into force, have right of occupancy in that land, notwithstanding the fact that he may not have cultivated or held the land for a period of twelve years.]

[(2)] The exclusion from the operation of this Act by a notification under subsection (2) of Section 1 of any area or part of an area, which is constituted a Municipality under the provisions of or which is within cantonment, shall not affect any right, obligation or liability previously acquired, incurred or accrued in reference to such area.]

17. 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.

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(3) A person shall be deemed, for the purposes of this Section, to have held as a 'Raiyat' any land held as a 'Raiyat' by a person whose heir he is.

(4) Land held by two or more co-sharers as a 'Raiyati' holding shall be deemed, for the purposes 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 village as long as he holds any land as a 'Raiyat' in that village and for three years thereafter.

(6) If a Raiyat recovers possession of land under Section 71, or by suit, he shall be deemed to have continued to be a settled 'Raiyat', notwithstanding his having been out of possession for more than three years.

(7) If, in any suit or proceeding, 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 has twelve years continuously held that land or some part of it as a 'Raiyat'.

18. Bhuinhars and Mundari khunt-kattidars to be settled Raiyats in certain

cases - The following classes of persons shall be deemed to be settled 'Raiyats' for the purposes of this Act, in regard to the land in their villages which they cultivate as 'Raiyats' (other than their own 'bhuinhari' or 'Mundari khunti-kattidari' land, and other than landlords privileged lands as defined in Section 18 and the provisions of sub-sections (3) to (6) of Section 17 shall apply to such persons as if they were 'Raiyats'.

19. Settled Raiyats to have occupancy-rights - Every person who is a settled Raiyat of a village within the meaning of Section 17 or Section 18 shall [subject to the provisions of Section 43] have a right of occupancy in all [* * *] for the time being held by him as a Raiyat in that village.

[20. Effect of acquisition of occupancy-rights by landlord. - (1) When the immediate landlord of an occupancy holding is a proprietor or a permanent tenure-holder and the entire interests of the landlords and the Raiyat in the holding become united in the same person by transfer, succession, or otherwise, such a person, shall hold the land as a proprietor or permanent tenure-holder, as the case may be, and shall not hold it by any subordinate right whatsoever; but nothing in this subsection 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 hold the land as proprietor or permanent tenure-holder, as the case may be, and shall not hold it by - any subordinate right whatsoever. Such transferee shall pay to his co-sharers a fair and equitable sum for the use and occupation of

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the land, and if he sub-lets the land to a third person, such third person shall be deemed to be a tenure-holder or a Raiyat, as the case may be, in respect thereof.

Illustration. - A, a co-sharer landlord, purchases the occupation holding of a Raiyat X. A sublets the land to Y who takes it for the purpose of establishing tenants on it: Y becomes a tenure-holder in respect of the land. Or A sub-lets it to Z who takes it for the purpose of cultivating it himself: Z becomes a Raiyat in respect of the land.

In determining from time to time what is a fair and equitable sum under this sub-section, 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 rent of occupancy-raiyats.

(3) 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 to hold any land comprised in his lease or mortgage in any other capacity than as such lessee or mortgagee and every interest acquired by him in such land during the period of his lease or mortgage, shall upon the termination of such lease or mortgage, cease to exist; provided that if he has settled the land with third person as a tenure-holder or a Raiyat, not being prohibited from so doing by the terms of his lease or mortgage, the rights of such third person shall not be affected by the mere termination of the lease, but such third person shall be deemed to be a tenure-holder or a Raiyat, as the case may be, in respect of the land.

(4) This Section does not prohibit and shall be deemed never to have prohibited the acquisition of a right of occupancy in a parcel of land-

- (a) by a village headman if by local custom or usage he has a right to acquire a right of occupancy in land of the class to which that parcel belongs, or
- (b) by a temporary tenure-holder who, before becoming such, was himself a resident cultivator of the village, in such parcel has been converted by him into Korkar or has been acquired by him by succession or inheritance.]

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 in ijara or farm or as a temporary tenure-holder or mortgagee.**

21. Rights of occupancy-Raiyat in respect of use of land. –

[(1)] When a Raiyat has a right of occupancy in respect of any land, he may use the land,-

- (a) in any manner which is authorised by local custom or usage, or
- (b) irrespective of any local custom or usage, in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy.

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[(2) Notwithstanding anything contained in any entries in the record-of-rights or any local custom or usage to the contrary, the following shall not be deemed to impair the value of the land materially or to render it unfit for purposes of the tenancy, namely,-

- (a) the manufacture of bricks and tiles for the domestic or agricultural purposes of the Raiyat and his family;
- (b) the excavation of tanks or the digging of wells or the construction of bandhs and ahars intended to provide a supply of water for drinking, domestic, agricultural or piscicultural purposes of the Raiyat and his family; and
- (c) the erection of buildings for the domestic or agricultural purposes or for the purposes of trade or cottage industries of the Raiyat and his family.

(3) If an occupancy-Raiyat, who pays for his holding rent in any of the ways specified in sub-section (1) of Section 61, excavates a tank on such holding for any purpose mentioned in clause (b) of sub-section (2), the landlord's share shall be nine-twentieths and the Raiyats share shall be eleven-twentieths in the produce of such tank.]

[21A. Rights of occupancy-Raiyat in trees. - Notwithstanding anything contained in Section 24, when a Raiyat has a right of occupancy in respect of any land,-

- (a) if the rent of such land is paid in cash, or if such land is a rent-free holding or a part of such holding, the Raiyat may,-
 - (i) plant trees and bamboos on such land and cut, cut down and appropriate the same;
 - (ii) cut, cut down and appropriate any trees or bamboos standing on such land;
 - (iii) appropriate the flowers, fruits and other products of any trees or bamboos standing on such land;
 - (iv) rear lac and cocoons on trees standing on such land and appropriate the same :

[Provided that if there is any specific entry in the latest record-of-rights regarding any tree or bamboo which was standing on any such land before the date of the final publication of such record-of-rights to the effect that any right in such tree or bamboo belongs to any person, other than the proprietor of the estate comprising such land or the tenure-holder of such land, the right of the Raiyat in such tree or bamboo specified in sub-clauses (ii), (iii) and (iv), shall be exercised in accordance with, and subject to any entry;]

- (b) if the rent of such land is paid in any of the ways specified in sub-section (1) of Section 61, the landlord and the Raiyat shall have equal shares in the timber and the landlord's share shall be nine-twentieths and the Raiyats share shall be eleven-twentieths in the flowers, fruits and other products of all trees or bamboos growing on such land whether planted before or after, the commencement of (Bihar Act 25 of 1947) and the Raiyat shall be entitled to plant any tree or bamboo on such land, but neither the Raiyat nor the landlord shall, without the consent of the other be entitled to cut down or appropriate any such tree or bamboo;

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Provided that if neither the landlord nor the Raiyat agrees to the cutting down of the tree or bamboo and either of them considers such cutting necessary one or the other may apply for permission to the Deputy Commissioner who, after making summary inquiry and hearing the parties, if any may, subject to such conditions as he thinks fit, either grant the permission or refuse it, and his decision shall be final.]

The End