

Bihar Tenancy Act

R.M.M. Law College, Saharsa

Pt. Lecturer- KESHAV KUMAR SHRIVASTAVA

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Topic- Different modes of acquisition of occupancy right.

Occupancy right

19. Continuance of existing occupancy-rights. - (1) Every raiyat who, immediately before the commencement of the Bengal Tenancy (Amendment) Act, 1928, has, by the operation of any enactment by custom or otherwise, a right of occupancy in any land, shall, when that 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 clause (ii), clause (iii) of sub-section (3) of section 1, of any area or part of any area referred to in those clauses shall not affect any right, obligation, or liability, previously acquired, incurred or accrued, in reference to such area or part thereof.

22. 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 in any other way whatsoever, such person shall have no right to hold the land as a raiyat, but shall hold it as a proprietor or a permanent tenure-holder, as the case may be, but nothing in this sub-section shall prejudicially affect the rights of any third person.

(2) Nothing in this section shall prevent the acquisition by transfer, succession or in any other way whatsoever, of the holding of an occupancy-raiyat or share or portion thereof together with the occupancy-rights therein by a person who is, or becomes, jointly interested in the lands as a proprietor or a permanent tenure-holder :

Provided that a co-sharer landlord who purchases a holding of a raiyat at a sale in execution of a rent decree or of a certificate under this Act shall not hold the land comprised in such holding as a raiyat but shall hold the land as a proprietor or tenure-holder, as the case may be, and shall pay

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to his co-sharers a fair and equitable sum for the use and occupation of the same. The rent payable by the raiyat to the other co-sharer landlords at the time of transfer shall be regarded as the fair and equitable sum until otherwise determined in accordance with the principles of this Act regulating the enhancement or reduction of the rents of occupancy-raiyats.

(3) A person holding land as a temporary tenure-holder or farmer of rents shall not, while so holding, acquire a right to hold as a raiyat any land comprised in his temporary tenure or farm.

Explanation.- A person having a right to hold the lands of an occupancy holding as a raiyat does not lose it by subsequently holding the land as a temporary tenure-holder or farmer of rents.

Incidents of occupancy-right

23. 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 purposes of the tenancy.

23A. Rights of occupancy-raiyat and landlord in trees. - Subject to the provisions of section 23, 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.

24. Obligation of raiyat to pay rent. - An occupancy-raiyat shall pay rent for his holding at fair and equitable rates.

25. 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 ejection passed on the ground-

- (a) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes 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.

26. Devolution of occupancy-right on death. - 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.

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26A. Application of sections 26B to 26J. - Repealed by s. 3 of the Bengal Tenancy (Amendment) Act, 1938 (Bengal Act No. 6 of 1938).

26B. Holdings of occupancy-raiyats with occupancy-rights transferable. - The holding of an occupancy-raiyat or share or a portion thereof, together with the right of occupancy therein, shall, subject to the provisions of this Act, be capable of being transferred in the same manner and to the same extent as other immovable property.

26C. Manner of transfer and notices to landlord and co-sharers. - (I) Every transfer shall be made by registered instrument, except in the cases of a bequest or a sale in execution of a decree or of a certificate signed under the Bengal Public Demands Recovery Act, 1913; and a registering officer shall not accept for registration any such instrument unless the sale price, or where there is no sale price, the value of the holding or portion or share thereof transferred is stated therein, and unless it is accompanied in the prescribed manner by-

- (i) a notice giving particulars of the transfer in the prescribed form, together with the process fee prescribed for the service thereof on the landlord or landlords or their common agent, if any, who is or are not party or parties to the transfer, and
- (ii) such notices and process fees as may be required by sub-section (4).

(2) In the case of a bequest of such a holding or portion or share thereof, no Court shall grant probate or letters of administration until the applicant files in the prescribed manner a notice and deposits a process fee similar to those referred to in clause (i) of sub-section (1).

(3) A Court or Revenue-officer shall not confirm the sale of such a holding or portion or share thereof put to sale in execution of a decree or a certificate signed under the Bengal Public Demands Recovery Act, 1913, and no Court shall make a decree or order absolute for foreclosure of a mortgage of such a holding or portion or share thereof, until the purchaser or the mortgagee, as the case may be, files in the prescribed manner a notice or notices and deposits a process fee or fees similar to those referred to in sub-section (1).

(4) If the transfer of a portion or share of such a holding be one to which the provisions of sub-section (1) of section 26F apply, there shall be filed in the prescribed manner notices giving particulars of the transfer in the prescribed form together with process fees prescribed for the service thereof on all the co-sharer tenants of the said holding who are not parties to the transfer.

(5) The Court. Revenue-officer or registering officer, as the case may be, shall, in the prescribed manner, serve the notices for which this section provides, and after receipt of such notice, the landlord or landlord's agent, as the case may be, shall not refuse to recognise the transferee as the tenant in respect of the holding or portion or share thereof transferred nor omit to enter the transferee's name in the landlord's rent-roll in place of that of the transferor or where only a share or a portion of the transferor's interest has been transferred, along with the name of the transferor
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Provided that such recognition shall not operate as an admission of the amount of rent or the area or any incident of such occupancy holding other than the existence of a right of occupancy therein or be deemed to constitute an express consent of the landlord to the division of the holding or to the distribution of the rent payable in respect thereof :

Provided further that if a transfer is subsequently set aside or modified by a competent authority, the party in whose favour such order has been made shall, unless such order has been passed in a suit, appeal or other proceedings to which the landlord was a party, deposit with the authority before whom the appropriate suit or proceeding was first initiated the prescribed fee for a notice on the landlord or his common agent, if any, describing the modifications made by such order, on receipt of which notice the landlord shall cause his rent-roll to be corrected accordingly.

(6) In this section -

- (a) "transferee", "purchaser" and "mortgagee" include their successors-in-interest,
- (b) "transfer" does not include partition or a lease, or, until a decree or order absolute for foreclosure is made, simple or usufructuary mortgage or mortgage by conditional sale, and
- (c) "transferor" includes a person whose interest in a holding or portion or share thereof has terminated in the circumstances mentioned in sub-section (2) or sub-section (3).

26D. Landlord's transfer fee. - Repealed by section 5 of the Bengal Tenancy (Amendment) Act, 1938 (Bengal Act No. 6 of 1938).

26E. Procedure on sale in execution of a decree, certificate or foreclosure of mortgage. - Repealed by section 5 of the Bengal Tenancy (Amendment) Act, 1938 (Bengal Act No. 6 of 1938).

26F. Power of co-sharer of transfer or to purchase. - (1) Except in the case of-

- (a) a transfer to a co-sharer in the tenancy whose existing interest has accrued otherwise than by purchase, or
- (b) a transfer by exchange, lease, or partition, or
- (c) a transfer by bequest, or gift (including heba but excluding heba-bil-ewaz for any pecuniary consideration) in favour of the husband or wife of the testator or the donor or of any relation by consanguinity within three degrees of the testator or donor, or
- (d) a wakf in accordance with the provisions of the Muhammadan Law, or
- (e) a dedication for religious or charitable purposes without any reservation of pecuniary benefit for any individual, one or more co-sharer tenants of the holding, a portion or share of which is transferred, may within four months of the service of the notice under section 26C, apply to the Court for the said portion or share to be transferred to himself or themselves.

Explanation. - A relation by consanguinity shall, for the purposes of this section, include a son adopted under the Hindu Law.

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The End