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L.L.B Part- 3rd

Subject- Bihar Tenancy Act

Paper- 4th

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Topic- What are the rights of occupancy by under Raiyat and how can an underraiyat acquire a right of Occupancy?

Application to under-raiyats. –

The provisions shall apply to all under-raiyats whether their tenancies were created before or after the commencement.

Liability of under-raiyat to pay rent. –

When an under-raiyat is admitted to the occupation of land, he shall, subject to the provisions of this Act, become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission :

Provided that the rent or rate of rent agreed upon shall not be less than the rent or the rate of rent payable by the raiyat to his landlord.

Enhancement of rent of under-raiyat. –

The rent of an under raiyat shall not be enhanced except under the provisions of sections 48B or 48D or section 48D, as the case may be.

Enhancement by contract. –

(1) The money rent of an under raiyat may be enhanced by a written registered contract :

Provided that the rent shall not be enhanced so as to exceed by more than four annas in the rupee the rent previously payable by the under-raiyat, except in the following cases, namely :-

(i) When an under-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 wholly or partly at the cost of his landlord and to the benefit of which the under-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 under 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.

(ii) When an under-raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of his landlord, and the under-raiyat agrees, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable.

(2) The rent fixed by a contract under the provisions of sub-section (1) shall not be liable to enhancement during a period of fifteen years from the date of such contract.

Ejectment of under-raiyat. –

An under-raiyat shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise, namely :-

(a) on the ground that he has failed to pay an arrear of rent :

Provided that, if the under-raiyat is one whose rent is payable in terms of cash and not of produce and he pays through the Court all arrears up to date together with such interest and damages as the Court may award, he shall not be liable to ejectment on account of such arrears;

(b) on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition consistent with this Act and on the breach of which he is, under the terms of the contract between himself and his landlord, liable to be ejected;

(c) on the ground that the terms of his lease has expired, when he holds the land under a written lease;

(d) on the ground that the tenancy has been terminated by his landlord by one year's notice expiring at the end of the agricultural year when he holds the land otherwise than under a written lease; or

(c) on the ground that he does not agree to pay the rent determined by the Court under sub-section (4) of section 48D :

Provided that an under-raiyat shall not be liable to ejectment on the grounds specified in clause (c) or clause (d) -

(i) if the under-raiyat has -

(1) been admitted in a document by the landlord to have a permanent and heritable right to his land, or,

(2) been in possession of his land for a continuous period of twelve years whether before or after or partly before and partly after the commencement of the Bengal Tenancy (Amendment) Act, 1928, or has a homestead thereon,

(ii) in the case of under-raiyats' other than those described in clause (i) of this proviso unless the landlord has satisfied the Court that he requires the land for his homestead or for cultivation by himself or by members of his family or by hired servants or with aid of parties.

Enhancement by suit. –

(1) The landlord of an under-raiyat may, subject to the provisions of this Act, institute a suit to enhance the rent of the under-raiyat, and to eject the under-raiyat if he refuses to pay the rent determined by the Court.

(2) The Court shall determine what rent is fair and equitable for the holding : provided that the rate of rent so determined shall not in the case of a money rent exceed one-third of the value of the average estimated produce of the land for the decennial period preceding the institution of the suit and in the case of a produce rent one-half of such produce.

(3) The Court shall thereupon inquire from the under-raiyat if he agrees to pay the rent so determined. If the under-raiyat agrees, he shall be entitled to remain in occupation of his holding at that rent for a term of fifteen years from the date of the agreement.

(4) If the under-raiyat does not agree to pay the rent so determined, the Court shall pass a decree for ejectment.

(5) A decree for ejectment passed under this section shall take effect from the end of the agricultural year in which it is passed.

Application for restitution by under-raiyat. –

When a landlord has ejected an under-raiyat on the grounds specified in clause (c) or clause (d) of section 48C, the under-raiyat may apply to the Court by which the decree for ejectment was passed to be put in possession of the holding from which he was ejected by way of restitution if, within four years of the ejectment, the landlord sublets the holding or any portion thereof; and thereupon the Court may, if satisfied after inquiry that the landlord did not use the land for his homestead, or for cultivation by himself or by hired servants or by members of his family or with the aid of partners, order a recovery of possession on such terms, if any, with respect to compensation to the persons injured as to the Court may seem just.

Incidents of holding of under-raiyat. –

The holding of an under raiyat shall descend in the same manner as other immovable property, but subject to the provisions of sub-section (2) of section 48G, shall not be transferable except with the, consent of the landlord.

Occupancy-rights of under-raiyat. –

(1) Every under-raiyat who, immediately before the commencement of the Bengal Tenancy (Amendment) Act, 1928, had by custom a right of occupancy in any land, shall have a right of occupancy in that land.

(2) Every under-raiyat who has a right of occupancy in his holding shall have, as regards his immediate landlord, all the rights and liabilities of a raiyat with a right of occupancy, as set forth in -

(i) Chapter V other than those conferred or imposed by sections 20, 21 and 22,

(ii) sections 65, 116 and 178, so far as possible, and

(iii) Chapter XIV,

and his holding, as against such landlord, shall be deemed to be the holding of an occupancy-raiyat for the purposes of the said sections or Chapters.

(3) The interest of an under-raiyat who has a right of occupancy in his holding shall not be deemed to be protected interest under clause (d) of section 160.

(4) The provisions of sections 48A to 48E shall not apply to an underraiyat who has a right of occupancy in his holding, in so far as such provisions are inconsistent with this section.

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.

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