

ODISHA ACT 8 OF 1938

THE ODISHA TENANCY (AMENDMENT) ACT, 1938

(9th September) 1938)

AN ACT TO AMEND THE ODISHA TENANCY ACT.

Preamble.

WHEREAS it is expedient to amend the Orissa Tenancy Act, 1913, in the manner hereinafter appearing;

It is hereby enacted as follows:—

Short title and commencement.

1. (1) This Act may be called the Orissa Tenancy (Amendment) Act, 1938.

(2) It shall come into force on such date as the Provincial Government may by notification appoint.

Amendment of section 6, Bihar and Orissa Act II of 1913.

2. In clause (ii) of section 6 of the Orissa Tenancy Act, 1913 (hereinafter referred to as the said Act), for the words and figures "a tenure-holder for the purposes of sections 14 to 20 and 99, and a raiyat for the purposes of all other sections of this Act" the words "a raiyat for the purposes of this Act" shall be substituted.

Amendment of sections 19 and 20, Bihar and Orissa Act II of 1913.

3. In sections 19 and 20 of the said Act, the figures, word and letter "31 or 31-A" shall be omitted, and before the figures "16" the word "or" shall be inserted.

Amendment of section 27, Bihar and Orissa Act II of 1913.

4. In section 27 of the said Act, the words "but shall not be entitled to cut down trees in contravention of any local custom" shall be omitted.

Insertion of
section 27-A in
Bihar and Orissa
Act II of 1913

5. After section 27 of the said Act, the following new section shall be inserted:—

“27-A. Notwithstanding anything ^{Specific rights of an occupancy raiyat.} contained in section 27 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 utilize or dispose of the timber of,

any tree on such land, and any such act shall not render him liable to ejectment under section 29 of this Act:

Provided that where there is a specific entry in favour of the landlord in the last record-of-rights published before the commencement of the Orissa Tenancy (Amendment) Act, 1938, regarding any tree now standing on any occupancy holding, the right of the landlord in such tree shall be in accordance with such entry or with any decision of a Civil Court affecting such entry, notwithstanding anything to the contrary contained in this section:

Provided further that it shall be open to a raiyat, on payment to the landlord of such compensation as may be fixed by the Collector, on an application made to him in that behalf, to acquire the rights reserved to a landlord as aforesaid.”

Insertion of section
30-A in Bihar
and Orissa Act II
of 1913.

6. After section 30 of the said Act, the following new section shall be inserted, namely:—

“30-A. (1) The occupancy holding of ^{Transfer of occupancy holding.} a raiyat, or a portion or share thereof, shall be transferable by sale, exchange, gift or bequest without the landlord's

consent and without payment of any fee to him. Such transfer shall carry with it the occupancy right in the holding and all the rights appurtenant thereto.

(2) An occupancy raiyat may sub-let or mortgage his holding or a portion or share thereof without his landlord's consent."

Substitution of new section for section 31, Bihar and Orissa Act II of 1913. 7. For section 31 of the said Act, the following new section shall be substituted, namely :—

"31. (1) Every transfer of an occupancy holding or a portion or share thereof whether by sale, exchange or gift shall be made by registered instrument except in the case of a sale in execution of a decree or of a certificate signed under the Bihar and Orissa Public Demands Recovery Act, 1914: Manner of transfer and notice to landlord. B. & O. Act IV of 1914.

Provided that the Provincial Government may exclude, from the operation of this sub-section, any class of transfer of occupancy holdings in any Government estate of which rent is payable direct to Government, and may make rules for carrying out the purposes of this section in such estates and prescribe fines or penalties for the infringement of such rules:

Provided further that nothing in this section shall be deemed to affect the provisions of the Muhammadan law relating to gifts, and in such cases of transfer the rules made under the first proviso shall have effect.

(2) A registering officer shall not accept for registration any such instrument unless the rent of each holding or a portion or share thereof is stated separately in the instrument and unless it is accompanied by a notice signed by the transferor and the transferee giving particulars of

Specific rights of an occupancy raiyat.

Transfer of occupancy holding.

the transfer in the prescribed form and the fee prescribed for the service of such notice on the landlord.

(3) When any such instrument is admitted to registration, the registering officer shall transmit the notice to the Collector who shall cause it to be served on the landlord named in the notice in the prescribed manner :

Provided that when a sole landlord purchases a holding or a portion or share thereof no notice need be served.

(4) In the case of a transfer of an occupancy holding or a portion or share thereof by bequest, the Court shall, before granting probate or letters of administration, require the applicant to file a notice giving particulars of the transfer in the prescribed form accompanied with the prescribed fee for the service of the notice on the landlord. When probate or letters of administration have been granted, the Court shall transfer the notice to the Collector who shall cause it to be served on the landlord named in the notice in the prescribed manner.

(5) When the holding of an occupancy raiyat or a portion or share thereof is sold in execution of a decree or of a certificate signed under the Bihar and Orissa Public Demands Recovery Act, B. & O. Act 1914, other than a decree or certificate for arrears of rent due in respect of the holding or dues recoverable as such, and neither the purchaser nor the decreeholder is the sole landlord, the Court or the revenue officer, as the case may be, shall, before confirming the sale, require the purchaser to file a notice giving particulars of the transfer in the prescribed form and to deposit a fee of the

prescribed amount for the service of it. When the sale has been confirmed, the Court or the revenue officer shall transmit the notice to the Collector who shall cause it to be served on the landlord in the prescribed manner.

(6) When a mortgage of a holding of an occupancy raiyat or of a portion or share thereof is foreclosed and the decreeholder is not himself the sole landlord, the Court shall, before making a decree or order absolute for the foreclosure, require the mortgagee to file a notice giving particulars of the transfer in the prescribed form and to deposit fee of the prescribed amount for the service of it. When the decree or order for foreclosure has been made absolute, the Court shall transmit the notice to the Collector who shall cause it to be served on the landlord in the prescribed manner.

(7) Nothing in this section shall bar any suit in a Civil Court for establishing or setting aside a transfer."

Substitution of new sections for section 31 A, Bihar and Orissa Act II of 1913.

8. For section 31-A of the said Act, the following new sections shall be substituted, namely:—

"31-A. (1) In the case of a transfer of a portion or share of an occupancy holding by sale, exchange, gift or bequest which is not defined by metes and bounds, the transferee and the persons possessing interest in the remainder of the holding shall be considered as joint tenants by the landlord.

Distribution of rent on transfer of portion of occupancy holding.

(2) In case the transfer is by sale, exchange, gift or bequest and is of a portion of an occupancy holding and the portion is defined by metes and bounds, the landlord shall be deemed to agree to the division of land and the distribution of rent as set forth in the

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notice referred to in section 31 unless, within six months of the date of service of notice, an application is filed by him to the Collector for a just and equitable distribution of rent. The Collector shall, on such application by the landlord or by any other person within such period, hold an enquiry in the prescribed manner and order a distribution of rent which is fair and equitable.

“31-B. (1) Notwithstanding anything contained in this Act, any transferee, who obtained a transfer of an occupancy holding or a portion or a share thereof, before the commencement of the Orissa Tenancy (Amendment) Act, 1938, shall be liable to pay the fees lawfully payable by him at the time of the transfer, within three years from the coming into force of that Act or the date of the landlord's knowledge of the transfer whichever is later, but he shall not be liable to ejection on the ground that the landlord has not given his consent to the transfer.

Payment of fees for transfer of occupancy holding made before the commencement of the Orissa Tenancy Amendment Act, 1938.

(2) The holding or a portion or a share thereof shall not be liable to be sold in satisfaction of the decree for arrears of rent without making the said transferee a party to the proceedings in execution of the decree provided that the transferee has given notice of transfer by registered post to the landlord.

Explanation.—Notwithstanding anything contained in this Act or in the Code of Civil Procedure, in the case of a transfer of a holding or a portion or a share thereof, whether before or after the decree, the transferee may be brought on record in the proceedings in execution either in substitution of or in addition to the judgment-debtor, and such transferee shall, when so added or substituted, be treated as a judgment-debtor for all purposes of the said proceedings in execution of the decree.”

Amendment of section 70, Bihar and Orissa Act II of 1913.

9. In sub-section (3) of section 70 of the said Act, the figures, word and letter "31 or 31-A" shall be omitted and before the figures "16" the word "or" shall be inserted.

Amendment of section 76, Bihar and Orissa Act II of 1913.

10. In section 76 of the said Act, for the words "twelve and a half" the word "six" shall be substituted.

Substitution of new section for section 83, Bihar and Orissa Act II of 1913.

11. For section 83 of the said Act, the following new section shall be substituted, namely:—

"83. When an occupancy holding or a portion or share thereof is transferred and arrears of rent have accrued thereon prior to the date of the transfer, the transferor and the transferee shall be jointly and severally liable to the landlord for such arrears of rent which shall be a first charge on the holding."

Substitution of new section for section 84, Bihar and Orissa Act II of 1913.

12. For section 84 of the said Act, the following new section shall be substituted, namely:—

"84. All impositions upon a tenant, in addition to or in excess of the rent lawfully payable shall be illegal and all stipulations and reservations for the payment thereof shall be void."

Substitution of new section for section 85, Bihar and Orissa Act II of 1913.

13. For section 85 of the said Act, the following new section shall be substituted, namely:—

"85. (1) If any landlord or his agent levies from a tenant anything in money or kind in addition to or in excess of the rent or interest lawfully payable, the Collector of the district or any Deputy Collector who may be specially empowered by the Provincial Government in this behalf may, if he is so satisfied, by order impose on the landlord or on his agent or on both, as the case may be, such penalty as such officer thinks fit, not exceeding

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five hundred rupees, or when double the amount or value of what is so levied exceeds five hundred rupees, not exceeding double that amount or value or simple imprisonment for a period not exceeding six months in either case.

Such officer may proceed against the landlord and his agent in the same proceeding or in separate proceedings, and shall award to the tenant, by way of compensation and cost, such portion of the penalty as he thinks fit.

(2) If in any suit, application or proceeding under this Act or any other law, the Court or presiding officer has grounds for believing that any landlord is liable to a penalty under this section, such Court or officer shall inform the Collector.

(3) A proceeding under sub-section (1) shall be instituted—

- (a) upon complaint made by a tenant, or
- (b) after the receipt by the Collector of information under sub-section (2) or on the termination of any suit, application or proceedings under this Act or any other law in the course of which the Collector has grounds for believing that the landlord is liable to a penalty under this section :

Provided that all proceedings under this section shall be compoundable.

(4) If in any proceedings instituted under this section, the Collector discharges any landlord or his agent, and is satisfied that the complaint or allegation of the tenant on which the proceedings were instituted is false or vexatious, the Collector may, in his discretion, by his order of discharge, direct the tenant to

pay to the landlord such compensation not exceeding one hundred rupees as the Collector may think fit.

Any fine imposed or compensation awarded under this section may be recovered in the manner provided by any law for the time being in force for the recovery of a public demand."

Repeal of section 95, Bihar and Orissa Act II of 1913.

14. Section 95 of the said Act shall be omitted.

Repeal of section 96, Bihar and Orissa Act II of 1913.

15. Section 96 of the said Act shall be omitted.

Amendment of section 232, Bihar and Orissa Act II of 1913.

16. In clause (b) of sub-section (3) of section 232 of the said Act, for the word and figures "section 27" the words and figures "sections 27 and 27-A" shall be substituted.

Amendment of section 237, Bihar and Orissa Act II of 1913.

17. Illustration (2) in section 237 of the said Act shall be omitted, and illustration (3) shall be re-numbered as "(2)".

Amendment of section 250, Bihar and Orissa Act II of 1913.

18. In clause (e) of section 250 of the said Act, the figures, word and letter "31 and 31-A" shall be omitted and before the figures "16" the word "or" shall be inserted.