

## ORISSA ACT XV OF 1947

THE ORISSA TENANCY (AMENDMENT)  
ACT, 1947

[Received the assent of the Governor on the 9th May 1947, first published in the Orissa Gazette on the 16th May 1947]

AN ACT FURTHER TO AMEND THE ORISSA TENANCY ACT, 1913

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

Bihar and  
Orissa Act  
II of 1913.

It is hereby enacted as follows :—

Short title

1. This Act may be called the Orissa Tenancy (Amendment) Act, 1947.

Substitution of new section for section 18, Bihar and Orissa Act II of 1913.

2. For section 18 of the Orissa Tenancy Act, 1913 (herein- Bihar and Orissa Act II of 1913. after referred to as the said Act), the following section shall be substituted, namely:—

“18. The transfer of a portion of a tenure and the registration of the same under section 14, 15 or 16 shall not be deemed to constitute a division of tenure unless such portion is defined by metes and bounds.

The transferee of such portion of tenure which is not defined by metes and bounds and the holder of the remainder of such a tenure shall be jointly and severally liable to the landlord for the rent of the entire tenure, unless the landlord has consented in the manner specified in section 99 to a division of tenure or to a distribution of rent thereof.”

Substitution of new section for section 99, Bihar and Orissa Act II of 1913.

3. For section 99 of the said Act the following section shall be substituted, namely:—

“99. (1) Save as provided in sections 18, 31 and 31-A and otherwise provided in the next two succeeding sub-sections a division of tenure or holding or distribution of rent payable in respect thereof, shall not be binding on the landlord unless it is made with his express consent in writing or with that of his agent duly authorised in that behalf:

Provided that if it is proved that in any landlords' rent-roll there is an entry showing that any tenure or holding has been divided, or that the rent payable in respect thereof has been distributed, such landlord may be presumed to have given his express consent in writing to such division or distribution.

(2) Where there is division of tenure or holding and distribution of rent payable in respect thereof, whether such division took place before or after the coming into force of the Orissa Tenancy (Amendment) Act, 1947, and the portion of the tenure or holding so divided is defined by metes and bounds, such division shall not require the express consent provided in sub-section (1) and the landlord shall, on receiving notice of such division and distribution of rent be deemed to recognise the division of tenure or holding and distribution of rent agreed upon by the co-sharer tenants.

(3) (a) The landlord may, within six months of the date of the receipt of the notice of the division of tenure or holding and distribution of rent referred to in sub-section (2), make an application to the Collector for a just and equitable distribution of rent of such tenure or holding. The Collector shall, on making such enquiry as he deems fit, order a distribution of rent, of such tenure or holding which is fair and equitable.

(b) If the co-sharer tenants fail to arrive at an agreement in respect of the distribution of rent though there may be division of tenure or holding by metes and bounds, the Collector shall on the application of one or more co-sharer tenants, distribute the rent of such tenure or holding.

(c) An order passed by the Collector under clause (a) or clause (b) of this sub-section shall be deemed to have divided the tenure or holding as the case may be, with the express consent of the landlord as required by sub-section (1).

(4) The distribution of rent of the tenure or holding by the Collector shall be made in accordance with the rules prescribed by the Provincial Government.

*Explanation*—For the purpose of this section, a tenure or holding shall be deemed to be divided by metes and bounds if there is separate possession of portion of such tenure or holding by tenant.

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

4. To sub-section (1) of section 204 of the said Act, the following proviso shall be added, namely :—

“Provided that no second appeal shall lie to the Commissioner from an order passed by the Collector under sub-clause (ii) of clause (c).”

Substitution  
of new  
section for  
section 228,  
Bihar and  
Orissa Act  
II of 1913.

5. For section 228 of the said Act the following section shall be substituted, namely :—

“228. (1) Rules 89 and 90 of order XXI in the First Schedule to the Code of Civil Procedure, 1908, shall not apply in cases where a tenure or holding has been sold for arrears of rent due thereon, but in such cases the judgment-debtor, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Court to set aside the sale, on his depositing—

(a) for payment to the decree-holder, the amount recoverable under the decree up to the date when the deposit is made, with costs ;

(b) for payment to the auction purchaser, as penalty a sum equal to five per cent of the purchase money, but not less than one rupee.

(2) Where a tenure or holding has been sold for arrears of rent due thereon, the decree-holder, the judgment-debtor or any person whose interests are affected by the sale, may, at any time within three months from the date of the sale, apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting the sale :

Provided as follows :—

(a) no sale shall be set aside on any such ground unless the Court is satisfied that the applicant has sustained substantial injury by reason of such irregularity or fraud ; and

(b) no application made by a judgment-debtor or any person whose interests are affected by the sale under this sub-section shall be allowed unless the applicant either deposits the amount recoverable from him in execution of the decree or satisfies the Court for reasons to be recorded by it in writing, that no such deposit is necessary.

(3) Where a person makes an application under sub-section (2) for setting aside the sale of his tenure or holding, he shall not, unless he withdraws that application, be entitled to make or prosecute an application made under sub-section (1).

(4) Rule 91 of Order XXI in the First Schedule to the Code of Civil Procedure, 1908, shall not apply to any sale under this Chapter.

(5) An appeal shall lie against an order setting aside or refusing to set aside sale :

Provided that where the Court has refused to set aside the sale on the application of the judgment-debtor or any person whose interests are affected by the sale and the amount recoverable in execution of the decree is not in deposit in Court, no such appeal shall be admitted unless the appellant deposits such amount in Court."

Insertion of new section after section 228, Bihar and Orissa Act II of 1913.  
Sale when to become absolute or be set aside, and return of purchase money in certain cases.

6. After section 228 of the said Act the following section shall be inserted, namely :—

"228-A. (1) Where no application is made under sub-section (1) of section 228 within thirty days from the date of sale or where such application is made and disallowed, the Court shall make an order confirming the sale and thereupon the sale shall become absolute.

(2) Where such application is made and allowed, and where in the case of an application under sub-section (1) of section 228 the deposit required by that sub-section is made within thirty days from the date of sale, the Court shall make an order setting aside the sale :

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

(3) Where a sale is set aside under this section, the purchaser shall be entitled to an order against any person to whom the purchase money has been paid for its re-payment with or without interest as the Court may direct.

(4) No suit to set aside an order made under the section shall be brought by any person against whom such order is made.

(5) Notwithstanding anything contained in this section, an application may be made under sub-section (2) of section 228 to set aside the sale, and where such application is allowed the order made under sub-section (1) confirming the sale shall be deemed to be cancelled."