

REGISTERED No. P 390.



The Orissa Gazette

EXTRAORDINARY

PUBLISHED BY AUTHORITY.

CUTTACK, TUESDAY, SEPTEMBER 14, 1937.

LAW AND COMMERCE DEPARTMENT.

NOTIFICATION.

The 13th September 1937.

No. 6884-L.—The following Bill which it is proposed to introduce in the Orissa Legislative Assembly is hereby published under rule 77 of the Orissa Legislative Assembly Rules, 1937, for general information.

L. A. BILL no. OF 1937.

AN ACT TO AMEND THE ORISSA
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 :—

1. (1) This Act may be called the Orissa Tenancy (Amendment) Act, 1937.

(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 "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 figure "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 section shall be inserted :—

"27-A. Notwithstanding anything 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 utilise or dispose of the timber of

any tree on such land.

Amendment of section 30, Bihar and Orissa Act II of 1913.

6. For the first paragraph of section 30 of the said Act the following shall be substituted, namely:—

“All rights of occupancy shall be heritable and shall be transferable by sale, gift or otherwise, subject to the provisions in sections 97, 99 and 220.

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

7. For section 31 of the said Act the following shall be substituted, namely:—

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

“(2) A registering officer shall not accept for registration any such instrument unless the rent of each holding, 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 the transfer in the prescribed form and the process fee prescribed for the service of such notice on the landlord or his common agent, if any.

“(3) When any such instrument is admitted to registration, the registering officer shall cause the notice to be served on the landlord named in the notice or

his common agent, if any, in the prescribed manner :

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

“(4) In the case of a 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 process fee for the service of the notice on the landlord or his common agent, if any. When probate or letters of administration have been granted, the court shall cause the notice to be served on the landlord named in the notice or his common agent, if any, 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 a certificate signed under the Bihar and Orissa Public Demands Recovery 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 decree-holder 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 process fee of the prescribed amount. When the sale has been confirmed, the court or the revenue officer shall cause the notice to be served on the landlord or his common agent, if any, 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 process fee of the prescribed amount. When the decree or order for foreclosure has been made absolute, the court shall cause the notice to be served on the landlord or his common agent, if any, in the prescribed manner.

“(7) Where owing to the number of co-sharer landlords and to a *bona fide* doubt as to who constitute the entire body of the landlords the notice cannot conveniently be served on all, the said notice shall be published in any manner prescribed.

“(8) The provisions in this section in so far as they relate to the service of the notice on the landlord shall apply to all transfers of holdings, portions or shares thereof, in which the right of occupancy passes completely but do not apply to such transfers as liens, mortgages, leases created by the occupancy raiyat in limitation of his right.

“(9) Nothing in this section shall bar any suit in a civil court for establishing or setting aside a transfer.”

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

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

“Section 31-A.—(1) In the case of a ^{Distribution of rent on} sale of ^{portion of} occupancy holding, which is not defined metes and ^{occupancy} bounds, the persons possessing interest ^{holding.} in the holding shall be considered as joint tenants by the landlord.

“(2) In case the transfer 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 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 being made by the landlord and on application being made by any other person concerned within six months of the date of transfer, order a distribution of rent which is fair and equitable.”

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 figure “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 word “money rent” the word “rent” and for the words “twelve and a half” the word “six” shall be substituted.

Repeal of section 83, Bihar and Orissa Act II of 1913.

11. Section 83 of the said Act shall be omitted.

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

12. For section 84, the following 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. ^{Illegal exactions.}”

“*Explanation:* Any levy of local cess from a tenant—

“(a) in excess of the net amount prescribed by clause (2) of section 41 of the Cess Act, 1880; or

“(b) on any scale in excess of that prescribed by clause (3) of that section ;

shall be deemed to be an imposition in excess of his rent.”

Amendment of section 85, Bihar and Orissa Act II of 1913.

13. In section 85 of the said Act, after the words “in excess of the rent” the words “local cess” shall be inserted.

Insertion of new section 85-A in Bihar and Orissa Act II of 1913.

14. After section 85 of the said Act, the following section shall be inserted, namely :—

“85-A. (1) If any landlord or his agent exacts or attempts to exact from a tenant anything in money or kind in addition to or in excess of the rent or local cess 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 in summary proceedings, if he is so satisfied, by order impose on the landlord or on his agent or on both as penalty such sum as such officer thinks fit, not exceeding five hundred rupees, or when double the amount or value of what is so exacted or attempted to be exacted exceeds five hundred rupees, not exceeding double that amount or value. Summary proceedings by Collector to deal with illegal exactions.

“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) may be instituted—

“(a) at any time upon complaint made by a tenant or on his behalf within six months from the date of the exaction, or of the attempt to exact, as the case may be;

“(b) within three months of the receipt by the Collector of information under sub-section (2) or of 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;

“(c) in any other case within one year of the exaction or of the attempt to exact in respect of which the landlord is liable to a penalty under this section.

“(4) If in any proceeding instituted under section 85 or 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.

“(5) 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.

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

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

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

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

17. In clause (h) of sub-section (3) of section 232 of the said Act for the word "money rent" the word "rent" shall be substituted.

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

18. Illustration (2) in section 237 shall be omitted, and illustration (3) shall be re-numbered as "(2)".

Amendment of clause (e) of section 250, Bihar and Orissa Act II of 1913.

19. 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 figure "16" the word "or" shall be inserted.

STATEMENT OF OBJECTS AND REASONS.

It is more than two decades that the Orissa Tenancy Act of 1913 came into force defining for the first time, in the three coastal districts of Cuttack, Puri and Balasore, the substantive rights of the landlords and the raiyats. Since then little substantial change has been made in the tenancy law. In 1929 and 1935 private Bills were introduced in the Bihar and Orissa Legislative Council, proposing amendments on a few provisions of the Act in regard to rights in trees, division of rents, transfer of occupancy rights and such like matters, but since in 1929 the Orissa Settlement was in progress, and in 1935 the separation of Orissa was impending, the then Government were not inclined to undertake any change in the existing tenancy laws applicable to Orissa.

The Orissa Settlement has revealed that a considerable amount of friction exists between the landlords and the raiyats on several questions, not the least being the question of mutation fees payable on transfer of occupancy rights. It was observed at the Revisional Settlement of 1906 to 1912 that the zamindars who had previously taken no steps to interfere with transfers suddenly began to demand exorbitant prices for the purchase of their consent. A somewhat similar tendency was noticed at the latest settlement in the permanently-settled estates, where the landlords had begun to alter the usage and to raise their charges to the rate of 25 per cent. of the consideration money, which is laid down as the limit in temporarily-settled estates. There is further a conflict in rulings between the highest civil court and the Revenue tribunals. It was held by the Commissioner of Orissa in 1919 that the provisions in section 31 did not apply to sales in execution of mortgage decrees, whereas the contrary view was held by the High Court of Patna (2 P.L.J.P. 476). In the ex-Madras area of Orissa the law has recognised the right of transfer of occupancy rights, and it is considered that it will prove a beneficial measure to confer similar rights in the other portion of Orissa. The right of free transfer is sought to be extended to mortgages and the Bill provides speedy means of notice to the landlords in regard to transfers so as to avoid much of the harassment to the raiyats which the latter undergo under the existing procedure.

In other provinces the right of occupancy raiyats in the trees on their holding is recognised, whereas in Orissa it is left to custom. In the matter of illegal exactions, Government propose to invest the Collectors with more power than before as it is common knowledge that exactions prevail in many estates and more stringent measures are necessary to deal with the matter. The interest on arrears of rent is high under the existing Act, and 6 per cent. would be a sufficient rate to allow.

Government are investigating the general question of tenancy law and, as a first step, they propose the amendments included in the present Bill, in the interest of the welfare and contentment of the raiyats on which the interest of the landlords and the community as a whole depend.

NOTES ON THE CLAUSES OF THE BILL.

Clause 2.—Under the existing Act, the *bajiaftidar* raiyat's right is superior to that of an occupancy raiyat, and the right was transferable, though the *bajiaftidar* was required to pay a sum of Re. 1 to the landlord for registration of succession and Rs. 2 for that of transfer (*vide* sections 14 and 15). Since it is proposed to make the occupancy right transferable without payment of landlord's fees, similar concession should also be extended to the *bajiaftidar* raiyat, and the amendment seeks to provide this.

Clause 3.—This is consequential to the amendment proposed to sections 31 and 31-A.

Clause 4.—This is consequential to the insertion of section 27-A proposed in clause 5.

Clause 5.—The new section 27-A proposes to give full right in trees to occupancy raiyats.

Clause 6.—The right of free transfer is now intended to include sub-lease and mortgage but leaves the existing provisions regarding surrender and subdivision of occupancy holdings in sections 97 and 99.

Clause 7.—The clause provides for the manner of notice to the landlord in respect of transfers and applies to transfer of occupancy holdings or portions thereof in which the right of occupancy is passed wholly and does not apply to leases, mortgages, liens created by the raiyat in limitation of his rights.

Clause 8.—This provides for a distribution of rent, and interference of Collector when there is a disagreement.

Clause 9.—The omission suggested is consequential. Since the occupancy right will be transferable, the restriction imposed on the unrecognised transferees in regard to the deposit of rent in revenue court should be removed.

Clause 10.—Section 76 is amended so as to reduce the interest on arrears of both money and produce rents from 12½ to 6 per cent.

Clause 11.—The repeal of section 83 is necessary as occupancy rights both in temporarily- and permanently-settled estates are proposed to be transferable in clause 6.

Clause 12.—No distinction is proposed to be maintained in law between *abwabs* and illegal exactions, and impositions in excess of legally payable local cess are meant to be brought under the illegal exactions.

Clause 13.—The amendment of section 85 is consequential.

Clause 14.—The new section 85-A is proposed to be inserted so as to enable Collector to take action in regard to illegal exactions of his own motion or on information received from the civil or revenue courts or from the persons aggrieved in the manner of provisions in section 67.

Clause 15.—Consequential to amendment proposed in section 30.

Clause 16.—Consequential to amendment proposed in section 30.

Clause 17.—This is consequential to amendment proposed in section 76.

Clauses 18 and 19.—Consequential to amendments proposed in sections 31 and 31-A.

C. G. NAIR,

Secretary, Law and Commerce Department.

Published by order of His Excellency the Governor.

C. G. NAIR,

Secretary, Law and Commerce Department.