

Assam (Temporarily Settled Areas) Tenancy Act 1971

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Act 23 of 1971

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Assam (Temporarily Settled Areas) Tenancy Act 1971(Assam Act 23 of 1971)Last Updated 13th February, 2020(Received the assent of the President on the 3rd December, 1971)[Published in the Assam Gazette, Extraordinary, dated the 10th December, 1971]An Act to regulate the relations of landlord and tenant in the temporarily settled areas of Assam.Preamble. - Whereas it is expedient to regulate to the rights and liabilities of agricultural tenants and their landlords in temporarily settled lands in the State of Assam;It is hereby enacted in the twenty-second year of the Republic of India as follows"Chapter - 1 Preliminary

1. Short title, extent and commencement.

(1)This Act may be called the Assam (Temporarily Settled Areas) Tenancy Act, 1971.(2)It shall come into force at once (With effect from 10th December 1971).(3)It extends to-(a)the districts of Kamrup, Nowgong, Darrang, Sibsagar and Lakhimpur;(b)Silchar and Hailakandi Sub-divisions of the district of Cachar ; and(c)temporarily settled areas of Gossaingaon, Sidli and Bijni Circles of Kokrajhar Sub-division in the district of Goalpara and the temporarily settled areas of Karimganj Sub-division (Now Karimganj is a district).(4)The State Government may, by notification, extend the whole or any part of the Act to any other areas of the State:Provided that no such notification shall be issued unless a notice of the intended extension is previously published in the area concerned and any objection received is disposed of after due consideration.

2. Exception.

- The Act does not apply to-(a)land included in any Reserved Forest;(b)land owned by the Union or the State Government or by local authority which is used for any public purposes;(c)land reserved for the purpose of professional grazing reserves, village grazing reserves, recreation grounds, burial or cremation ground, road, canal, drain, embankment or their maintenance or for any other public purposes;(d)land which is non-agricultural and situated outside town land area;(e)land comprised within estates settled for special cultivation when, and only so long as, such lands are used for

purposes of special cultivation or for purposes ancillary thereto. Explanation. - (I) This sub-clause includes lands settled for the cultivation of tea under the rules in force, from time to time, such as fee simple grants, revenue redeemed grants, 30 years' grants under the New Lease Rules though now assessed with full revenue and lease for special cultivation under settlement rules framed from time to time, under the Assam Land and Revenue Regulation, 1886 (I of 1886). (II) Purposes ancillary for special cultivation shall mean the following" (i) land used for factory buildings; (ii) land used for staff buildings including labour lines; (iii) land used for roads, bridges and drains within the tea estates; (iv) land used for nurseries including shade trees; (v) land used for hospitals, dispensaries, creche, recreation club and play ground; (vi) land used for any other buildings made by management under any other law in force; (vii) land used for seed "bari"; (f) lands included in town-land.

3. Definitions.

- In this Act, unless there is anything repugnant in the subject or context" (1) "agriculture" includes horticulture, pisciculture and other allied agricultural pursuits; (2) "agricultural year" means the year commencing from the first day of Baisakh and ending with the last day of Chaitra, according to Assamese Calendar; (3) "Agriculturist" means a person who cultivated land personally; (4) "holding" means a parcel or parcels of land or an undivided share thereof, held by a tenant and forming the subject of a separate tenancy; (5) "improvement" means any work which adds to the value of the holding, which is suitable to the holding and which is executed directly for the benefit of the holding, and includes, (a) construction of wells, tanks, water channels or other works for storage, supply or distribution of water for the purpose of agriculture or for drinking or for the use of men and cattle employed in agriculture; (b) drainage, reclamation from rivers or other waters or protection from flood, erosion or other damage by water, or land used for agricultural purposes or waste land which is culturable; (c) erection of dwelling-house for tenant and his family together with all necessary outhouses; (6) "land" means "agricultural land"; and "agricultural land" means land used for agricultural purpose or purposes subservient thereto. Explanation. - Land under homestead occupied for residential purposes in connection with an agricultural holding shall be deemed to be included in "agricultural land"; (7) "landlord" means a person immediately under whom a tenant holds but does not include any Government; (8) "money rent" in relation to rent payable in crop share for the purpose of deposit into court and for calculation of arrear rent in respect of rent payable in crop share is the money value of the crop deliverable by a tenant to his landlord and such money value shall be computed on the basis of the market-value of that crop prevailing at the time of harvesting in the locality concerned; (9) "notification" means a notification published in the Official Gazette; (10) "personal cultivation" means cultivation by the person himself, or by member of his family or by hired labourers on fixed remuneration payable in cash or kind but not in crop share, under personal supervisions of the person himself or any member of his family, provided it is accompanied by the bearing of risks of cultivation by the owner and by residence in the village in which the land is situated or nearby village or town within a distance of 5 miles during the greater part of the agricultural season : Provided that in the case of a person who is a widow or a minor, or is subject to any physical or mental disability or is a member of the Defence forces of the Indian Union or is a student below the age of 21 years of an educational institution recognised by the State Government; the land shall be deemed under personal cultivation even in the absence of such personal supervision; (11) "prescribed" means prescribed by rules framed under the

Act;(12)"principal crop" shall mean only one crop for each agricultural year as may be agreed upon mutually between the landlord and the tenant :Provided that where there is no agreement, the principal crop shall be only one agricultural crop grown in each agricultural year viz., Sali or such local name generally used in respect of paddy known as winter paddy and the harvesting of which is done in the months of December, January and February, corresponding to Agrahayana, Pausa and Magha.(13)"rent" means whatever is lawfully payable or deliverable by the tenant to the landlord in cash or in kind or partly in cash and partly in kind whether as a fixed quantity of produce or as a share of the produce, on account of use or occupation of the land or on account of any right in the land held by the tenant;(14)"Revenue Officer" means any officer with that designation appointed by the State Government for the purposes of this Act;(15)"Revenue Court" means the Court of the Deputy Commissioner, Settlement Officer or, of such other officer as the State Government may invest with the powers of Revenue Court for the purposes of this Act;(16)"Revenue Rate" means in respect of every parcel of land in an estate settled temporarily at full rates, the rate at which revenue is for the year actually payable to Government upon that parcel of land;(17)"tenant" means a person who cultivates or holds the land of another person, and is, or but for a special contract (express or implied) would be, liable to pay rent for that land to that other person, and includes a person who under system generally known as 'Adhi' (whether Guchiadhi or Gutiadhi), 'barga', 'chukti', 'bhag' or 'chukani' cultivates the land of another person on condition of delivering a share or quantity of the produce of such land to that person:Provided that a person who cultivates or holds land immediately under the State Government is not a tenant within the meaning of this definition.Explanation. - A person who holds land on condition of service to a temple or religious institution shall be deemed to be the tenant of the manager of such temple or religious institution;(18)"town lands" means any land within an area declared or deemed to be a Municipality notified area under the Assam Municipal Act, 1956" (Assam Act XV of 1957).(19)The following words shall have the same meaning as is assigned to them in the Assam Land and Revenue Regulation, 1886 (1 of 1886), or the Rules framed thereunder-"estates", "temporarily-settled-estate", "land revenue", "proprietor" "land holder", "settlement-holder", "periodic lease", "special cultivation", "ordinary cultivation".

Chapter II

Classes of Tenants

4. Classes of Tenants.

(1)There shall be, for the purpose of this Act, only the following classes of tenants, namely"(i)Occupancy tenant, that is to say, a tenant holding immediately under a proprietor, land-holder or settlement-holder other than land-holder, and having a right of occupancy in the lands held by him;(ii)non-occupancy tenant, that is to say, a tenant holding immediately under a proprietor, land-holder or settlement-holder other than land-holder but not having a right of occupancy in the land held by him; and(2)From the date of commencement of this Act, any person who was recorded in the record-of-rights as a privileged tenant under the provisions of the Assam (Temporarily Settled Districts) Tenancy Act, 1935, (Assam Act III of 1935) shall henceforward be recorded as an Occupancy Tenant :Provided that he shall, subject to the provisions of Section 28 of the Act, continue to pay the rent at the same rate as before the commencement of this Act.(3)From

the date of commencement of this Act, there shall be no new under-tenant.

Chapter III

Occupancy Tenant

5. Acquisition of occupancy rights.

(1)A person who for a period of not less than 3 years has continuously held land as a tenant shall have a right of occupancy in that land.(2)The period of 3 years may be wholly or partly before or after the commencement of this Act.(3)A person shall be deemed, for the purposes of this section to have continuously held land under a landlord notwithstanding that the particular landlord under whom he held the land was different at different times, provided the land held by him was the same.(4)A person shall be deemed, for the purposes of this section, to have held as a tenant any land held as a tenant by a person whose heir he is.(5)If a tenant recovers possession of his holding under any law in force, any period during which he might have been out of possession, shall count towards the period specified in sub-section (1).

6. Incidence of occupancy right.

- An occupancy tenant shall have permanent, heritable and transferable right of use and occupancy in the land of his holding, subject to the other provisions of this Act.

7. Devolution of death.

- If a tenant dies intestate in respect of a right of occupancy, it shall, subject to any custom, descend in the same manner as other immovable property.

8. Right of transfer.

- An occupancy tenant shall have a right of transfer in respect of his holding with prior permission of the Government in the manner prescribed. A notice of such transfer shall be served on the landlord in the manner prescribed :Provided that an occupancy tenant shall not transfer his land to a non-agriculturist.

9. Prohibition of sub-letting.

- From the date of commencement of this Act, an occupancy tenant shall have no right to sub-let his land.

10. Right of use of land.

- An occupancy tenant may use the land of his tenancy in any manner which does not materially impair the value of the land or render it unfit for the purpose of tenancy.

11. Right in trees.

- An occupancy tenant shall be entitled, if there is no under-tenant under him "(i) to plant, (ii) to enjoy the flowers, fruits and other products of, (iii) to fell, and (iv) to utilise and dispose of the timber of any tree on such land : Provided that in doing so he does not contravene the provisions of any law : Provided further that he shall not be entitled without landlord's consent, to fell, utilise or dispose of the timber of any tree which stood on the holding before the creation of the tenancy. When the tenancy is over 20 years' old, all trees standing on the land shall be presumed, until the contrary is proved, to have been planted or to have begun to grow during the tenancy.

12. Obligation to pay fair rent.

- Any occupancy tenant shall pay rent for his holding at fair and equitable rate, subject to the maximum rate of rent laid down under the provisions of Section 28 of this Act : Provided that if the tenant has been holding his land for a continuous period of not less than 10 years' (i) at a rate of rent never exceeding the revenue rate; or (ii) at less than the revenue-rate in addition to service to be rendered by him then the rent at the revenue-rate shall be deemed to be the fair and equitable rent.

13. Restriction on enhancement of rent.

- Rent of an occupancy tenant shall not be enhanced except as provided for in Chapter VII of this Act.

14. Protection from ejectment.

- An occupancy tenant shall not be liable to ejectment from his holding except as provided for in Chapter IX of this Act.

Chapter IV

Non-Occupancy Tenant

15. Incidence of the tenancy.

(a) A non-occupancy tenant shall have right of possession till he is lawfully ejected and subject to the other provisions of the Act or any custom the tenancy shall descend in the same manner as other immovable property. (b) A non-occupancy tenant holding shall not be transferable except for the purpose of mortgage for the purpose of agriculture only in favour of the State Government, the

Union Government, a Co-operative Society or an authorised bank to secure loan advanced by such Government, Society, or Bank and in the event of any default in the repayment of such loan, it shall be lawful for the Government, the society or the bank as the case may be, to cause the tenant's interest in the land to be attached and sold under the authority provided for in Section 49 of this Act and to apply the proceeds in payment of such loan.

16. Prohibition of sub-letting.

- From the date of commencement of this Act, a non-occupancy tenant shall have no right to sub-let his land.

17. Obligation to pay fair rent.

- A non-occupancy tenant shall pay rent for his holding at fair and equitable rate, subject to the maximum rate of rent laid down under provisions of Section 28 of this Act.

18. Restrictions on enhancement of rent.

- Rent of a non-occupancy tenant shall not be enhanced except as provided for in Chapter VII of this Act.

19. Protection against ejectment.

- A non-occupancy tenant shall not be ejected except as provided for in Chapter IX of this Act.

Chapter V

Under-Tenant

20. Prohibition against creating new under-tenant tenancy.

- On and from the date of commencement of this Act, there shall be no new under-tenant holding land under an occupancy tenant or a non-occupancy tenant :Provided that any under-tenant holding any land prior to the enforcement of this Act, shall, however, continue to hold the same on the same terms and conditions as immediately before the commencement of this Act until he acquires the intermediary and ownership rights of his holding under the provisions of Chapter VI.

Chapter VI

Acquisition of intermediary and ownership rights

21. Acquisition of ownership rights and intermediary rights by tenants.

- Notwithstanding anything to the contrary in any law, custom, or agreement, an occupancy tenant personally cultivating the land of his tenancy, shall be entitled to acquire the rights, titles and interests of his landlord, hereinafter called the ownership rights' according to the provisions of Section 23 (I):Provided that where the holding of an occupancy tenant is being cultivated by an under-tenant as defined in The Assam (Temporarily Settled District) Tenancy Act, 1935, from any date prior to enforcement of this Act, such under-tenant shall be entitled to acquire the rights, titles and interests of his landlord, hereinafter called 'the intermediary rights' and also the ownership rights of the land owner of the holding according to provisions of Section 23 (II) :Provided further that the ownership rights of any land of a landlord who is a widow or a minor or physically or mentally disabled person or a member of the Defence Services shall not be liable to acquisition under the provisions of this Chapter.

22. Acquisition of ownership rights and intermediary rights by Government for tenants.

- The State Government may, at any time after the commencement of this Act, by Notification declare that"(i)the rights, titles and interests of any or all land-lords in respect of any holding held and personally cultivated by occupancy tenants, shall stand transferred to and vest in the respective occupancy tenants free from all encumbrances created by the landlords ;(ii)the rights, titles and interests of any or all landlords in respect of holding held by occupancy tenants or non-occupancy tenants but cultivated by an under-tenant as defined in the Assam (Temporarily Settled Districts) Tenancy Act, 1935, from a date of prior to commencement of this Act and the intermediary rights of the occupancy tenants or non-occupancy tenants, as the case may be, shall stand transferred to and vest in the respective under-tenants free from all encumbrances created by the occupancy tenants or non-occupancy tenants or the landlords.On such declaration the provisions of Section 24 shall apply.

23. Acquisition of ownership rights and intermediary rights by tenants.

- (I) Any occupancy tenant personally cultivating the land of his tenancy, desirous of acquiring the ownership rights of his landlord may at any time make an application in writing to the Deputy Commissioner and on such application being made and compensation as provided in Section 25 in determined and paid by the occupancy tenant, the Deputy Commissioner shall declare the said occupancy tenant to have acquired the ownership rights free from all encumbrances.(II)Any under-tenant, as defined in The Assam (Temporarily Settled Districts) Tenancy Act, 1935, cultivating the holding of an occupancy tenant or non-occupancy tenant from a date prior to commencement of this Act, desirous of acquiring the intermediary rights of his landlord and the ownership rights of the land-owner of his holding, may at any time make an application in writing to the Deputy Commissioner, and on such application being made and compensation as provided in Section 24 is determined and paid by the under-tenant, the Deputy Commissioner shall declare the said under-tenant to have acquired the intermediary rights of his landlord and the ownership rights

of his holding free from all encumbrances.

24. Compensation.

- The total compensation payable for acquiring the ownership rights as well as the intermediary rights if any, of any holding shall be an amount equal to 50 times the full rate of annual land revenue payable for such land.

25. Apportionment of compensation.

(1)Where an occupancy tenant is personally cultivating the holding, his landlord shall be entitled to receive the entire amount of 50 times of land revenue.(2)Where an under-tenant is cultivating from a date prior to commencement of this Act, the total amount of compensation shall be apportioned as follows"

(a) Towards acquisition of ownership rights. 75 percent of the total compensation.

(b) Towards acquisition of intermediary rights. 25 percent of the total compensation.

26. Procedure for payment of compensation.

(1)In all cases of acquisition under this Chapter, the Deputy Commissioner shall give notice to the landlord and all other persons having interests in the land and also fix a copy thereof in a conspicuous place of his office. He shall thereafter make an enquiry as prescribed, hear objections if any and then make an order determining the compensation payable for acquisition of ownership rights as also intermediary rights if any and apportion the same where necessary;(2)(a)If the acquisition be under Section 22, the Deputy Commissioner shall pay the amount as determined from the fund placed at his disposal within a period of 3 months, from the date of his passing orders under sub-section (1) above.(b)If the acquisition be under the provisions of Section 23, the Deputy Commissioner shall direct the occupancy tenant or under-tenant as the case may be to deposit the amount within a period of one month from the date of the order under sub-section (1) above and pay the compensation within a period of three months, from the date of the said order under sub-section (1).(3)In all cases of acquisition under Section 22, the occupancy tenant or under-tenant as the case may be, shall pay to the Government in 5 equated annual instalments the compensation as determined by the Deputy Commissioner, the first instalment payable being due on the expiry of 3 months from the date of his order. Where any instalment of compensation is not deposited in the Treasury within 30 days from the date of its becoming due, the Deputy Commissioner shall proceed to recover the instalments as if it were an arrear of land-revenue.(4)(a)In case of acquisition under Section 22, on deposit of the first instalment of compensation as assessed, the Deputy Commissioner shall issue to the erstwhile tenant a certificate of ownership right and also correct the revenue records.(b)In case of acquisition under Section 23, on deposit, of the compensation as assessed, the Deputy Commissioner shall issue to the erstwhile tenant a certificate of ownership right and also correct the revenue records.(5)In case of dispute as to the person or persons who are entitled to receive the amount of compensation money, the amount shall be kept in deposit in a Government Treasury and the dispute shall be referred to the Civil Court having jurisdiction and the

amount shall then be paid in terms of the final decision of the Court.

Chapter VII

Rent

27. Liability to pay rent.

- Notwithstanding anything contained in any law, custom or agreement no tenant shall be liable to pay rent whether in cash or in kind at a rate exceeding the maximum rate of rent as provided for hereinafter following.

28. Maximum rate of rent.

- The maximum rate of rent payable by an occupancy or non-occupancy tenant shall be as follows"(a)in case of cash rent, not exceeding 3 times of the land revenue payable for such land; and(b)in case of crop-rent, a rate of rent not exceeding one-fifth of the produce of the principal crop grown in each agricultural year :Provided that where the crop fails due to natural calamities and/or payment of the crop share is not possible due to circumstances beyond the control of the tenant, a sum equal to double of annual land revenue payable by his immediate landlord for such holding shall be fair rent :Provided further that a tenant desiring to pay his rent in cash in lieu of crop-rent may, after giving a written notice of not less than 30 days to the landlord, pay the money value of the crop deliverable by him to his landlord, computed on the basis of the market value of the principal crop prevailing at the time of harvesting at the locality concerned.

29. Grounds for enhancement of rent.

- Subject to the maximum limits laid down in Section 28 of this Act, the rent of a tenant shall be liable to enhancement on one or more of the following grounds, namely"(i)that the productive powers of the land held by the tenant have been increased by fluvial action; or(ii)that the productive powers of the land held by the tenant have been increased by any improvement effected by or at the expense of the landlord; or(iii)that the area of the tenant's holding has been increased by alluvion or otherwise; or(iv)that the revenue rate payable by the landlord to the State Government in respect of the holding of the tenant has increased.

30. Procedure for enhancement of rent.

- A landlord of any holding desiring an enhancement of rent on any ground mentioned in Section 29 may apply to the Deputy Commissioner stating the specific ground on which the claim for enhancement rents. The Deputy Commissioner shall thereupon make the necessary inquiry, and may, for that purpose cause an inspection of the land by a Revenue Officer, and shall thereafter pass such orders as deemed fit subject always to the maximum rate of rent laid down in Section 28 of the Act :Provided that-(1)Where an enhancement is claimed under Section 29 (i), the Deputy

Commissioner shall not take into account any increase in productive powers due to fluvial action, which is merely temporary or casual;(2)Where the enhancement is claimed under Section 29 (ii), the Deputy Commissioner shall have regard to actual increase in productive powers caused by the improvement, the cost of improvement, and also the increase or decrease, if any, in the cost of cultivation for utilising the improvement.

31. Grounds for reduction of rent.

- The rent of a tenant shall be liable to reduction on one or more of the following grounds, namely"(i)that the productive powers of the land held by the tenant have been decreased due to any action of the landlord or due to any cause beyond the control of the tenant during the currency of the present tenancy; or(ii)that the area of the tenant's holding has been decreased by diluvion, or by acquisition for public purpose; or(iii)that the revenue rate payable by his landlord to the State Government in respect of the tenant's holding has decreased.

32. Procedure for reduction of rent.

- A tenant desiring any reduction of rent or any one or more of the grounds mentioned in Section 31 may apply to the Deputy Commissioner stating the specific ground on which the claim for reduction rests. The Deputy Commissioner shall thereupon make the necessary enquiry and may, for this purpose, cause an inspection of the land by a Revenue Officer, and shall thereafter pass such orders as deemed fit.

33. Date of effect.

- Enhancement or reduction of rent, as the case may be, will take effect from the date of the order of the Deputy Commissioner.

34. When rent is due for payment.

(1)Cash-rent shall become due for payment a fortnight earlier than the corresponding land revenue which is payable by his landlord becomes due for payment, or where such landlord is not liable to pay the revenue, would have become payable had it been assessed to revenue.(2)Crop-rent shall become due for delivery within 60 days from the date of harvesting the crop.

35. Arrear of rent.

- Rent not paid when it falls due shall be deemed to be an arrear.

36. Rent-suit.

- No arrear of rent shall be realisable otherwise than by a rent-suit filed in the competent Civil Court. The procedure for such rent-suit shall be according to the provisions of the Civil Procedure

Code, 1908 and the plaint shall, in addition to matters mentioned in Rules 1, 2, 4, 5 and 6 and sub-rule (2) of Rule 9 of Order VII in the first Schedule to Code of Civil Procedure, 1908, specify the area of the land to which the suit relates and where fields are numbered in the village papers, the number and areas of each field and, in suits for arrears, the amount of the yearly rent which is payable. Where the land to which the suit relates does not form one or more fields numbered in the village papers the plaint shall contain a sufficient description of land and its boundaries.

37. Rent receipt.

- (i) Every tenant who pay his rent shall be entitled to obtain forthwith from his landlord a written receipt signed by the landlord or his authorised agent.(ii)The receipt shall contain a description of the land for which the rent has been paid, the total amount of rent due, the amount of rent in cash or the quantity or rent in kind that has been paid and the year for which it has been paid.(iii)If a receipt does not contain substantially the above particulars, it shall be presumed, until the contrary is shown, to be a full acquittance of the rent due from the tenant.(iv)When a landlord or his agent, without reasonable cause, fails to deliver to the tenant a receipt as required by the foregoing sub-sections, the landlord shall be liable to pay as compensation to the tenant a sum not exceeding two hundred rupees for each defaults.

38. Deposit of cash rent or money rent.

(1)When a landlord refuses to accept any rent when tendered to him by a tenant or when the tenant is in bona fide doubt as to who is entitled to receive the rent, the tenant may make an application to the Revenue Officer in the prescribed manner seeking permission to deposit the cash rent or money rent, as the case may be, alongwith the cost of transmission, and fee for notice.(2)The Revenue Officer, if satisfied after enquiry in the prescribed manner, as to the bona fide of the circumstances preventing the tenant from paying the rent to his landlord, shall accept the amount tendered and issue a receipt thereof. The receipt shall be deemed to be a valid discharge of the rent actually deposited by the tenant.(3)In cases of refusal to accept the rent the Revenue Officer shall remit the rent deposited by the tenant by Money Order to the last known address of the landlord.(4)In other cases the Revenue Officer shall cause a notice about the fact of deposit of rent in his office fixed in a conspicuous place and also to be served on any person whom he has reason to believe, is entitled to deposit, He shall thereafter proceed to hear the person or persons interested in the manner prescribed and if there is no dispute, the Revenue Officer shall cause immediate payment. In cases of dispute as to the person or persons who are entitled to receive the rent, the amount shall be kept to deposit in a Government Treasury and the dispute shall be referred to a Civil Court having jurisdiction and the amount shall then be paid in terms of the final decision of the Court.

Chapter VIII

Sale for arrear under decree

39. Sale of a holding for arrear of rent in certain cases.

(1)Where the unsatisfied rent-decree relates to arrear rent in respect of a holding of any occupancy tenant, he shall not be liable to ejectment for such arrear. But his holding shall be liable to sale in execution of the unsatisfied rent-decree and the landlord shall, instead of filing a suit for ejectment, submit an application, accompanied with the rent-decree to the competent Civil Court for attaching and putting the holding of the defaulting tenant to sale, and the decree for rent shall be satisfied out of the proceeds of the sale.(2)Notwithstanding anything contained in the Civil Procedure Code, 1908, or any other law for the time being in force, the procedure for attaching and selling the holding of the defaulting tenant shall be according to the provisions hereinafter following.

40. Attachment and proclamation of sale.

- The competent Civil Court, on receipt of the application of the landlord, shall issue an order of attachment of the holding and also a proclamation of sale of the same.

41. Manner of the publication of sale proclamation.

- The proclamation of sale shall be published in the following manner :(a)by affixing a copy thereof in a conspicuous place on the land of the holding; and(b)by affixing a copy thereof in a conspicuous place on the land of the issuing Court; and(c)by sending by registered post to the defaulting tenant a copy of the order of attachment and a copy of the proclamation of sale.

42. Date of sale.

- The sale shall not take place until after the expiration of at least 30 days from the date on which all the three conditions of Section 41 are fully complied with :Provided that no such sale shall take place until after a notice has been served on the judgment debtor.

43. Sale.

- On the date of the sale, it shall be put up to auction and sold to the highest bidder who shall pay one-fourth of the purchase money on the spot and the balance within 15 days :Provided that, if the defaulting tenant or an interested person pays the arrear under the decree together with the cost, if any of the sale before the day fixed for sale, then, the sale shall be stayed and the land released from attachment :Provided further that in the case of a holding of an estate pertaining to a religious institution, if the highest bid be that of a member of a different religion from the one to which the institution belongs the landlord shall have the option, to be declared in writing to the Court within 30 days of the sale of purchasing the holding at the highest bid.

44. Disposal of the sale-proceeds.

- The proceeds of the sale, after defraying the cost of the sale due to Government, if any, shall be disposed of in the following manner"(a)There shall first be paid to the decree-holder the cost, if any, incurred by him in bringing the holding to sale;(b)there shall next be paid to him the amount under the decree;(c)the balance, if any, shall then be paid to the defaulting tenant.

45. Setting aside of sale on deposit of decretal amount.

- The defaulting tenant or any interested person may, within 30 days of the date of the sale apply to the Court conducting the sale to set aside the sale on depositing in the Court, (a) the decretal amount together with cost of the sale for payment to the decree-holder, and (b) a sum equal to 5 per cent of the purchase money for payment to the auction purchaser as a penalty, and (c) the cost of the sale, if any, payable to the Government, and the Court shall thereupon set aside the sale and shall cause the amounts under (a), (b) and (c) above to be paid to the respective persons or authorities.

46. Setting aside of sale on ground of irregularity, etc.

- The defaulting tenant, the decree-holder or any other interested person may, within 60 days of the date of the sale, apply to the Court to set aside the sale on the ground of material irregularity or fraud or mistake in publishing or conducting the sale :Provided no sale shall be set aside on this ground unless the applicant proves to the satisfaction of the Court that he has sustained substantial injury by reason of such irregularity or mistake.

47. Confirmation of the sale.

- If there is no application to set aside the sale under Sections 45 and 46 or if any such application has been disallowed, the Court shall make an order confirming the sale which shall, thereupon, become absolute.

48. Auction purchaser to take the holding subject to certain encumbrances.

- The auction purchaser shall take the holding subject to lawful encumbrances, if any, including grant of land for public worship, public cremation ground or public burial ground.

49. Recovery of certain loans, etc., by the above procedure.

- Nothing in this Act shall prevent a holding of an occupancy or a non-occupancy tenant being sold in the manner laid down above under orders of the Deputy Commissioner for the recovery of (i) a loan advanced by the State Government, the Union Government or a Co-operative Society, or (ii) any other Government dues, but the rent of the holding shall remain the first charge on the sale proceeds after defraying the cost of the sale.

Chapter IX

Ejectment

50. Forfeiture of tenancy on sub-letting and transfer.

- If a tenant sub-lets or transfers the whole or any part of his holding otherwise than in accordance with the provisions of this Act, then the tenant's interest thereon shall be forfeited; and (a) if the transferee is an agriculturist, he shall be deemed to have become a tenant under the landlord under the same terms and conditions as the transferor; (b) if the transferee is a non-agriculturist then such transfer shall be void and the Deputy Commissioner may, after such enquiry as may be prescribed, and after ejecting any persons in possession, place any landless agriculturist as a non-occupancy tenant of the landlord.

51. Grounds of ejectment.

(1) An occupancy tenant shall not be ejected by his landlord from his holding except in execution of a decree for ejectment passed on the ground that he has used the land comprised in his holding in a manner which renders it unfit for the purpose of the tenancy. (2) Any tenant, not being an occupancy tenant, shall not be ejected from the land of his tenancy except in execution of a decree for ejectment passed on any one or more of the following grounds, namely: (a) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the J tenancy; (b) that he has broken a condition of his tenancy consistent with the provisions of 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) that he has failed to pay the arrear of rent; and (d) that the land is bona fide required by the landlord for his personal cultivation. No suit for ejectment on this ground shall be entertained before the expiry of 12 months, or after the expiry of 15 months for the date of creation of tenancy: Provided that if the tenant has elsewhere got no land or has lands less than 10 bighas in area, then he shall not be ejected on this ground unless he has been left with so much areas as will make the total of his holding equal to 10 bighas: Provided further that if the landlord does not cultivate the land personally within one year of the date of ejection of the tenant then the tenant shall be restored to his possession. .

52. Rights of ejected tenants to cost of improvement.

- Every tenant who is ordered to be ejected from his holding shall be entitled to compensation for improvements lawfully made by him or his predecessors in interest in respect of his holding and the Court's order for ejectment shall be made conditional on payment of the compensation. In estimating the compensation to be paid for improvement, regard shall be had to the following:-- (a) the amount by which the produce of the holding or the value of the produce or the value of the holding has increased by the improvement; (b) the conditions of the improvement and the probable duration of its effects; (c) the labour and capital involved in making the improvement; (d) reduction or remission of rent or other advantage given by the landlord to the tenant in consideration of the improvement; (e) in case of reclamation or irrigation, the length of

time during which the tenant has had the benefit of the improvement at an unenhanced rent.

53. Rights of ejected tenants in respect of crops, dwelling-house, etc.

- The following provisions shall apply in the case of every tenant ejected from a holding"(a)where the tenant has, before the date of his ejectment, sown or planted crops in any land comprised in the holding, he shall be entitled at the option of the landlord, either to retain possession of that land till the harvest for the purpose of tending and gathering in the crops or to receive from the landlord the value of the crops as estimated by the Court executing the ejectment decree. If the landlord elects to allow the tenant to retain possession of the land till the harvest, the tenant shall be liable to pay to the landlord, during the period of such retention of possession such rent as the Court executing the ejectment decree deems reasonable;(b)where the tenant has, before the date of his ejectment, prepared for sowing any land of his holding but has not sown or planted crops therein, he shall be entitled to receive from the landlord the value of the labour and capital expended by him in preparing the land, as estimated by the Court executing the ejectment decree, together with reasonable interest on that value;(c)in the case of an occupancy tenant compensation shall also be payable for trees standing on the land which the occupancy tenant is entitled to cut and appropriate;(d)no tenant shall be ejected from his dwelling site, except after giving the tenant an option to purchase the dwelling site, and if the dwelling house was constructed at the landlord's cost, then also the dwelling-house, at the prevailing market-value. If there is any dispute as to the value, then the Court executing the ejectment decree shall determine the value after making such enquiry as it deems fit.

54. Procedure of ejectment.

(1)No tenant shall be ejected from his holding except in execution of an ejectment decree passed by a competent Civil Court; and the relevant provisions of the Civil Procedure Code, 1908, shall apply to such proceeding.(2)No suit for ejectment of a tenant on the grounds mentioned in Section 51 (1) (2) (a) and (b) shall be entertained unless the landlord has first served a notice on the tenant requiring him to remedy, or to pay compensation for the misuse or the breach complained of and the tenant has failed to comply with it within one month of the receipt of the notice.(3)If it appears to the Court trying the ejectment suit that the complaint of misuse or the breach is true but it is remediable, then it may direct the tenant to remedy the misuse or the breach or to pay a reasonable compensation fixed by it within a specified date, and if the tenant still fails to comply with the direction, shall pass the decree, unless there are other reasons for not passing such decree,(4)No suit for ejectment on the ground mentioned in Section 51 (2) (c) shall be entertained unless at first a decree for rent has been obtained.(5)No suit for ejectment on the ground mentioned in Section 51 2 (d) shall be entertained, unless a three months' notice ending with the date of expiration of the lease has first been served on the tenant.

Chapter X

Preparation and maintenance of record-of-rights

55. Power to order preparation of record-of-rights for tenants.

(1)The State Government may, where a settlement operation under Chapter III of the Assam Land and Revenue Regulation, 1886, is not being carried out at any time, make an order in the case of any local area, estates or part thereof directing that a record-of-rights, with or without survey, for all or any class or classes of tenants be prepared by a Settlement Officer.(2)A notification in the Official Gazette of an order under this section shall be conclusive evidence that the order has been duly made.(3)The survey shall be made and the record-of-rights prepared in accordance with rules made in this behalf by the State Government.

56. Particulars to be recorded.

- Where an order is made under Section 55 the particulars to be recorded shall be specified in the order and may include either without or in addition to other particulars, some or all of the following, namely"(a)the name of each tenant;(b)the class to which the tenant belongs and the date of creation of the tenancy in respect of non-occupancy tenants;(c)the area and situation of the land held by the tenant;(d)the name of each tenant's landlord;(e)the rent payable at the time the record-of-rights is being prepared;(f)the mode in which that rent has been fixed whether by contract, by order of a Court, or otherwise;(g)if the rent is a gradually increasing rent, the time at which and the steps by which it increases;(h)the special conditions and incidence, if any, of the tenancy;(i)any right of way or other easement attaching to the land for which the record-of-rights is being prepared :Provided that, if lands are not used for purpose connected with agriculture, it shall be sufficient to record that fact together with such particulars as may be prescribed.

57. Preliminary publication, amendment and final publication of record-of-rights.

(1)Where a draft record-of-rights has been prepared, the Settlement Officer shall publish the draft in the prescribed manner and for the prescribed period, and shall receive and consider any objections which may be made to any entry therein, or to any omission therefrom, during the period of publication.(2)Where such objections have been considered and disposed of according to such rules as the State Government may make, the Settlement Officer shall finally frame the record and shall cause it to be finally published in the prescribed manner and the publication shall be conclusive evidence that the record has been duly made under this Chapter.

58. Certificate of and presumption as to final publication and presumption as to correctness of record-of-rights.

(1)Where a record-of-rights has been finally published under Section 57, the Settlement Officer shall, within such time as the State Government may by general or special order, require, make a certificate stating the fact of such final publication and the date thereof, and shall date and subscribed the same with his name and official title.(2)The certificate of final publication or, in the absence of such certificate, a certificate signed by the Deputy Commissioner of a district in which the

estate, or part thereof to which the record-of-rights relates is situate, stating that a record-of-rights has been finally published on a specified date shall be conclusive proof of such publication and of the date thereof.(3)The State Government may, by notification, declare with regard to any estate, that a record-of-rights has been finally published in the village in which the estate is situate and such notification shall be conclusive proof of such publication.(4)In any suit or other proceeding in which a record-of-rights prepared and published under this Chapter or a duly certified copy thereof, or extract therefrom, is produced such record-of-rights shall be presumed to have been finally published unless the contrary is proved.(5)Every entry in a record-of-rights finally published shall be conclusive evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved by evidence to be incorrect.

59. Appeal to and revision by superior authorities.

(1)An appeal, if presented within two months from the date of the order appealed against, shall lie to the Director of Land Records or any other officer or officers authorised by the State Government in this behalf from every order passed by a Settlement Officer prior to the final publication of the record-of-rights on any objection made.The orders of the Director of Land Records or any other officer or officers authorised by the State Government in this behalf shall, subject to the following sub-section be final.(2)The State Government may in any case on application or of its own motion, direct the revision of any record-of-rights or any portion of a record-of-rights :Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

60. Power to direct maintenance of record-of-rights.

- The State Government may make an order directing that the record-of-rights in any district, local area, estate or class of estates prepared under Chapter III, Part D, of the Assam Land and Revenue Regulation, 1886, or under this Chapter shall be maintained, so far as the interests of tenants of any class or classes are concerned, by registering all changes in the ownership accompanied by possession of such interests.

61. Procedure on application for registration or on information received otherwise.

- When an order is made under Section 60 the Deputy Commissioner or an officer invested with the powers of Deputy Commissioner under Sections 50 to 54 of the Assam Land and Revenue Regulation, 1886, who receive information through an application or otherwise of any change in the ownership and possession, of any such interest as is referred to in the foregoing section may make an order directing the registration of the name of the person so entering into ownership and possession :Provided that-(a)the information has been verified by local enquiry made by an officer having the powers of Deputy Commissioner under Sections 50 to 54 of the Assam Land and Revenue Regulation, 1886; or(b)notice has been published an enquiry held in a manner similar to that prescribed by Sections 52 and 53 of the Assam Land and Revenue Regulation, 1886.

62. Application to set aside order directing the registration.

- Where any person is aggrieved by an order directing registration under Section 61 which has been made after verification of the information received by local enquiry only, he may apply to the officer passing the order or his successor in office to set aside the order and on receipt of such application the officer receiving it shall cancel the registration and then proceed to publish the notice and hold the enquiry as in clause (b) of the proviso to Section 61.

Chapter XI

Miscellaneous

63. Surrenders.

- No tenant shall voluntarily surrender his holding except with the prior permission from the Deputy Commissioner and any voluntary surrender shall not be valid"(1)if such surrender is not approved by the Deputy Commissioner;(2)if the tenant does not give at least 3 months notice in writing to the landlord; and(3)if it is done without the consent and approval of the encumbrancer or under-tenant or tenant when there is an encumbrancer or an under-tenant or tenants as the case may be :Provided that the landlord shall not be eligible to resume the land for personal cultivation. The Deputy Commissioner may, when he permits a surrender place a landless Agriculturist in the holding who shall, thereafter, become a non-occupancy tenant of the landlord.

64. Abandonment.

(1)If a tenant not being an occupancy tenant voluntarily abandons his usual residence in the village or the neighbourhood without notice to his landlord and without arranging for payment of his rent, ceases to cultivate his holding, either by himself or by some other person, and is not traceable in spite of the best efforts of the landlord, then the landlord may, at any time after expiration of two years from the date of the tenant's ceasing to cultivate the holding and after giving information to the Deputy Commissioner and obtaining his permission thereto enter on the holding.(2)If the landlord is a proprietor or a land-holder, he may let it out to another tenant subject to the provisions of any law for the time being in force, or cultivate the land himself; but if the landlord is himself a tenant, he shall not let it out again to an under-tenant.(3)If the tenant abandoning the land has an under-tenant below him existing from a date prior to commencement of this Act the said under-tenant shall become a tenant under the landlord on the same terms and conditions as those on which the tenant who abandoned the land had held it.

65. Merger.

- When the landlord of any tenant's holding is a proprietor, land-holder or settlement holder and the entire interests of the landlord and the tenant in the holding become united in the same person by transfer, succession or otherwise, such person shall have no right to hold the land as a tenant but

shall hold it as a proprietor, land-holder or settlement holder, as the case may be; but nothing in this section shall prejudicially affect the rights of any third person.

66. Matters exempted from cognizance of Civil Court.

- Except where otherwise expressly provided for in this Act or the Rules made thereunder, no Civil Court shall exercise jurisdiction in any of the following matters"(a)claims to enhancement, reduction or alteration of rent of holdings;(b)claims to deposit rent;(c)preparation of record-of-rights under Chapter X and preparation, signing, or alteration of any document contained therein;(d)maintenance of record-of-rights;In these matters, the jurisdiction shall only be with the Revenue Court or Officer as the case may be.

67. Appeals.

- In all proceedings under this Act before a Revenue Officer or in a Revenue Court, except those in connection with preparation or record-of-rights under Chapter X and except where otherwise expressly provided for, appeals shall lie as follows-(a)to the Assam Board of Revenue from original order of the Deputy Commissioner or the Settlement Officer, within 60 days of the order appealed against;(b)to the Deputy Commissioner or the Settlement Officer, within 30 days of the order appealed against, from orders passed by any Revenue Officer sub-ordinate to him, even if the latter was exercising the delegated power of the Deputy Commissioner or the Settlement Officer when passing such order;

68. Jurisdiction of Civil Court.

- Except as provided in Sections 66 and 67 the Civil Court shall have jurisdiction in a suits between landlord and tenant as such.

69. Power to modify Civil Procedure Code in its application to landlord and tenant suits.

- (I) The State Government may, from time to time, make rules consistent with this Act declaring that any portion of the Civil Procedure Code, 1908, shall not apply to suits between landlord and tenants as such or to any specified classes of such suits or apply to them subject to modifications specified in the rules.(II)Subject to any rules made under the foregoing section and to the other provisions of this Act, the Code of Civil Procedure, 1908, shall apply to all such suits.

70. Delegation of Powers.

- The State Government may, by notification in the Official Gazette, invest generally or for special purposes and with such restrictions or conditions as it deems fit"(a)any Revenue Officer or Assistant Settlement Officer with all or any of the powers of the Deputy Commissioner or the Settlement Officer; and(b)any Settlement Officer with all or any of the powers of the Deputy Commissioner for

the purposes of and under this Act.

71. Penalties.

- Whoever-(i) wilfully fails or neglects to comply with any requirements made of him under this Act, or(ii) contravenes any lawful order passed under this Act, or(iii) obstructs the Deputy Commissioner or the Revenue Officer or any Officer authorised by him in taking any lawful possession under this Act, or(iv) wilfully contravenes any provisions made in this Act or Rules made thereunder, or(v) furnishes information which he knows or believes to be false or does not believe to be true, shall, on conviction before a Magistrate, and in addition to any other action that may be taken against him, be punishable with imprisonment which may extend to 6 months or with fine which may extend to one thousand rupees or with both.

72. Protection of action taken in good faith.

- No suit or proceeding or other legal proceeding shall lie against any person for anything done in good faith in pursuance of any of the provisions of the Act or the Rules or Orders made thereunder.

73. Power to order production of documents, etc.

- The Deputy Commissioner may, for the purpose of this Act, require any person to produce any documents, paper or register which is in his possession or under his control, or to furnish any information which he may think necessary for the proper discharge of any duties under this Act.

74. Power of enforcing attendance, etc.

- Any officer or authority holding an enquiry or hearing an appeal under this Act, shall have the power of a Civil Court under the Code of Civil Procedure, 1908, in respect of"(a) enforcing attendance of any person and his examination on oath;(b) compelling production of document; and(c) issue of Commission.

75. Power to make rules.

(1)The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of the Act.(2)Every rule made under this section shall be laid as soon as may be after it is made, before the State Legislature while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislature agrees in making any modification in the rule or that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

76. Repeal and Saving.

(1)The Assam (Temporarily Settled Districts) Tenancy Act, 1935 (Assam Act in of 1935), and the Assam Adhjar Protection and Regulation Act, 1948 [Assam Act XII of 1948), are hereby repealed.(2)Notwithstanding such repeal;(a)any rule made, any order issued, any notification published, any proceeding commenced, any action taken, or any thing whatsoever done under the Acts repealed, shall continue and be deemed to have continued and have effect as if made, issued published, commenced, taken or done under the provisions of this Act;(b)any action taken, order made, or other acts, and things done by any officer acting or purporting to act under the Acts repealed shall be valid and shall be deemed always to have been valid and shall not be called in question in any court on the ground of incompetency of the Officer to act under the Acts repealed.