

Reprinted from:

**ECONOMY, SOCIETY AND POLITICS IN
MODERN INDIA**

Edited by
D N Panigrahi

**Transferability of Raiyati Holdings in Bihar:
A Long Journey 1793-1950**

by
D C Wadhwa

**ISSUED UNDER THE AUSPICES OF
NEHRU MEMORIAL MUSEUM AND LIBRARY**



VIKAS PUBLISHING HOUSE PVT LTD
Regd. Office: 5 Ansari Road, New Delhi 110002
Head Office: Vikas House, 20/4 Industrial Area, Sahibabad 201010
Distt. Ghaziabad U.P. (India)

7. Transferability of Raiyati Holdings in Bihar: A Long Journey (1793-1950)

D. C. WADHWA

I THE OBJECT

Unlike under the raiyatwari system where the raiyats (ryots) were invested with primary rights of proprietorship with unrestricted rights to transfer their holdings,¹ the raiyats under the zamindari system, which was introduced in Bihar in 1793,² had to start their careers as tenants-at-will and therefore did not have any such rights in their lands. It is admitted on all hands that this was one of the main reasons for their not being able to get the necessary finances for making improvements in agriculture or wherever funds were available their reluctance to invest in any agricultural improvements. The object in this paper is to trace the evolution of the law on the subject, both historically and analytically, from the introduction of the permanent settlement in 1793 through 1934-1938 when such rights were conferred upon them to 1950 when the raiyats in Bihar became the counterparts of the raiyats in the raiyatwari areas in the country.

From 1793 to 1858 the rights of the raiyats in Bihar in this respect were governed by the Bengal Regulations.³ In 1859 was passed Act 10 of 1859⁴ (replaced by Act 8 of 1869⁵) which regulated the transferability of *raiya* (belonging to the raiyats) holdings in Bihar up to 1885 in which year was passed Act 8 of 1885⁶ from the provisions of which the raiyats in Bihar, except the Chota Nagpur Division⁷ and the district of Santhal Parganas,⁸ have been deriving their rights to transfer their holdings till today.

The present State of Bihar was a part of the Presidency of Bengal till March 31, 1912. On April 1, 1912, the territories now included in this state and the then Orissa Division of the Presidency of Bengal were separated from that Presidency and formed into a separate province called the Province of Bihar and Orissa. On April 1, 1936, the Orissa Division was separated from the Province of Bihar and Orissa and together with certain territories of the Province of the Central Provinces and the Presidency of Madras constituted into a separate province known as the Province of Orissa. After the separation of the Orissa Division from the Province of Bihar and Orissa, the Province of Bihar and Orissa was renamed as the Province of Bihar. On January 26, 1950, the Province of Bihar was redesignated as the State of Bihar.⁹

As regards the settlement of disputes in revenue matters in Bihar, the highest court of appeal in the country for such matters was the Bengal *Sadar Diwani Adalat*¹⁰ from 1793¹¹ to 1862¹² and the Calcutta High Court from 1862¹³ to 1916. Though the Province of Bihar and Orissa was constituted in 1912, a separate High Court, known as the Patna High Court, for that province was established on February 22, 1916.¹⁴

II UNDER TIGHT FETTERS

As regards the transferability of *raiya* holdings under the Bengal Regulations, clause 7 of section 15 of Regulation 7 of 1799¹⁶ described a lease-holder or other raiyat (tenant) as having a right to occupancy only so long as he paid certain rent or a rent determinable on certain principles according to local rates or usages, without any right to property or transferable possession. But under the provisions of Regulation 4 of 1793¹⁶ which embodied rules of procedure applicable to civil suits, a decree-holder could, *prima facie*, in execution of a decree¹⁷ for money against a raiyat, levy the judgement debt by public auction of a sufficient portion or the whole of the land, houses and all other effects, either real or personal, belonging to the raiyat (*vide* section 7). The rules of procedure applicable to civil suits were subsequently modified by Regulation 26 of 1814.¹⁸ But the provision contained in section 7 of Regulation 4 of 1793 was left unaffected by clause 7 of section 15 of Regulation 26 of 1814, which provided that the court, after causing the purport of the petition for execution to be compared with the decree contained in the original record of the suit, should proceed to execute the same in conformity with the provisions then in force. Though Regulation 7 of 1799 was framed not with a view to defining the rights of the raiyats of various degrees but only to provide rules so as to enable the landlords (zamindars¹⁹ and tenure-holders²⁰) to realise their rents with punctuality, still these of the expressions mentioned above created a doubt and suggested the question, whether a raiyat was 'without a right to property or transferable possession' absolutely or only in relation to his landlord who could treat the defaulting tenancy itself as forfeited for a breach of the condition for due payment of rent, no matter who might be in actual possession. There was an indirect reference to transferability of *raiya* holdings in section 33 of Regulation 11 of 1822²¹ which enacted that a raiyat possessing a transferable or hereditary right of occupancy could contest the justness of demand of enhancement of rent by the purchaser of an estate at public sale. This perhaps shows that there might have been some raiyats who could transfer their holdings by custom, if any.

The earliest judicial pronouncement on the subject of the transferability of *raiya* holdings, after the introduction of the permanent settlement, is contained in Construction No. 890, dated July 11, 1834, issued by the Bengal *Sadar Diwani Adalat*,²² where it was held that the rights and interests of a raiyat (*jotedar*) might be sold in satisfaction of a money-decree, provided the landlord did not object to the measure. The scope and effect of this Construction was explained by the Bengal *Sadar Diwani Adalat* in a Minute which was recorded on December 5, 1845, on a reference by the *Sadar Diwani Adalat* of the North-Western Provinces.²³ The Court stated that the phrase 'rights and interests' was purposely employed, conveying that the rights and interests of a raiyat could be sold without determining what they consisted of, a question which could be properly disposed of only by regular suit in the civil courts. The Court thus left any case in which the question might arise to depend upon the evidence

adduced in support of either the assertion or the denial of the existence of such saleable rights and interests.

It may be pointed out that the above-mentioned Construction of 1834 was not a casual expression of opinion by the Bengal *Sadar Diwani Adalat*, but was a deliberate determination upon a question of law in the performance of a statutory duty imposed on the judges. Regulation 41 of 1793²⁶ embodied rules for the codification and construction of the Regulations. Regulation 10 of 1796²⁵ was framed for the guidance of the courts in case of a difference of opinion on the meaning and construction of the Regulations. Section 2 of this Regulation authorised the district and the city judges and magistrates to state objections to the precepts of the provincial courts or courts of circuit, if they considered such precepts contrary to, or unwarranted by, the Regulation. If the provincial courts, or the courts of circuit, in reply to the objections confirmed the first precept in whole or in part, the district or the city judge or magistrate was bound to comply with the requisition. But the district or the city judge or magistrate was at liberty to request a reference to the *Sadar Diwani Adalat* or the *Sadar Nizamat Adalat* depending on the case in question. Section 3 next provided that on such reference, the determination of the *Sadar Diwani Adalat* or the *Sadar Nizamat Adalat* was to be held final and conclusive. In performance of the important duty thus imposed on the *sadar* courts, the judges, from time to time, issued Constructions which were held final and conclusive by all subordinate courts. The first of those Constructions was issued on May 3, 1798, and so far as the information could be collected, the last (No. 1415) on July 19, 1847.

The Construction issued in 1834, referred to above, was treated as good law in a case decided by a Full Bench of the Bengal *Sadar Diwani Adalat* in 1855.²⁹ In that case, the transferee of a raiyat sued to recover possession of a holding (*jote*) from the landlord and thus came in question the power of a raiyat to transfer. The landlord contended that such sale without his permission was not good. The primary court overruled the objection and decreed the suit. The lower appellate court confirmed the decree. On second appeal to the *Sadar Diwani Adalat*, the question was raised whether a raiyat could sell his holding to a third party without the permission of the landlord. On behalf of the transferee of the holding, reliance was placed upon Construction No. 890, dated July 11, 1834. The *Sadar Diwani Adalat* observed that the case before them was that of a private purchaser, while the Construction related to the case of a purchaser at an execution sale, and then pointed out that the Construction provided that the permission of the landlord to the sale of the holding in execution of decree must be obtained. The *Sadar Diwani Adalat* accordingly held that the claim of the transferee to possession without the permission of the landlord was invalid. It was said there by the *Sadar Diwani Adalat* that a purchaser bought as he thought something; the principle *caveat emptor* strictly applied, and it was for him to look to the certainty of getting a consideration for his purchase-money. The party whom he had succeeded had no equivalent to offer, he had merely a right of occupancy so long as

he paid his rent; failing to do so, either from inability or from unwillingness, the possession returned to the proprietor (landlord), the contract between him and his raiyat being no longer in force.

The combined effect of the Construction of 1834 and the decision of 1855, thus, was that the holding of a raiyat could be sold in execution of a money-decree, provided the landlord did not object, and a private alienation thereof by the raiyat was invalid against the landlord if made without his permission. The restraint on the raiyat against the alienation of his land, whether voluntary or involuntary, was obviously meant to be for the benefit of his landlord, and the restriction could be removed by his assent or his acquiescence in the transfer. The theory that such a restraint might be imposed for the benefit of the raiyat himself, to protect him against his own improvidence, had not yet been propounded.

It will be instructive to note here that in another case decided by the Bengal *Sadar Diwani Adalat* in 1856²⁷ the holdings of the raiyats were declared to be permissive ones, that is, held at the pleasure of the landlords. If the status of a raiyat under the Bengal Regulations was that of a tenant-at-will, it is obvious that he could not have got any transferable interest in the land held by him and that is what was pronounced by the Bengal *Sadar Diwani Adalat*. Anyway, all those decisions of the Bengal *Sadar Diwani Adalat* put the raiyat under tight fetters.

III STATUS QUO MAINTAINED

Act 10 of 1859 for the first time defined the prescriptive rights of the raiyats. Section 6 of this Act enacted that every raiyat who had cultivated or held land for a period of twelve years acquired a right of occupancy in the land so cultivated or held by him so long as he paid the rent. This section concluded with the proviso that the holding of the father or other person from whom a raiyat inherited was to be deemed to be the holding of the raiyat within the meaning of the section. Section 21 enacted that an occupancy raiyat could not be ejected except for arrears of rent and otherwise than in execution of a decree or orders of a court. Thus, this Act deprived the landlords of their right to turn out the raiyats who under the old laws were tenants-at-will, liable to ejection at their caprice if they did not come to terms. There was no mention of the rights of the raiyats, who had not occupied for twelve years, and of the under-raiyats of the raiyats holding rights of occupancy and therefore they continued to remain at the mercy of their landlords.

Though Act 10 of 1859 made the right of occupancy, while in the process of growth, transmissible by inheritance, it did not contain an exhaustive enumeration of the incidents of tenancy and stated nothing about the transferability of *raiya* holdings. The rules, enunciated by the Bengal *Sadar Diwani Adalat* before the passing of Act 10 of 1859, as to the involuntary alienations in 1834 and as to the voluntary alienations in 1855 did not appear to have been controverted in any recorded decision. According to those rules the consent of the landlord for the transfer of a holding by a raiyat was necessary. But that was the law before the enactment of Act 10 of 1859 when the raiyats did not have any prescriptive

right of occupancy and were more or less tenants-at-will. After the Act 10 of 1859 was brought into force, a question arose whether a holding, originally not transferable without the consent of the landlord, could be transferred after the raiyat had acquired a statutory right of occupancy in it. In a case decided by the Calcutta High Court in 1864 it was held²⁸ that a right of occupancy, not terminable except on the laches of the holder, was a perpetual lease the holder of which could not be ejected so long as he paid a fair and equitable rent, and therefore was transferable. The Full Bench of the Calcutta High Court overruled the above-mentioned decision in a case decided by it in 1867.²⁹ In that case the occupancy raiyat had transferred his holding without the consent of his landlord. The landlord sued the raiyat for arrears of enhanced rent. The transferee intervened. The District Judge decreed the claim against the original raiyat. The raiyat appealed and contended that he had divested himself of all liability for rent by the transfer of his holding. The Division Bench referred the following point for the decision of a Full Bench: whether a holding, not originally transferable without the consent of the landlord, became so because the raiyat had obtained a prescriptive right of occupancy in it. The Full Bench answered the question in the negative. It was observed by the Full Bench that there was nothing in section 6 of the Act which showed that it was the intention of the legislature to alter the nature of a holding and to convert a non-transferable holding into a transferable one merely because a raiyat who held it for twelve years had thereby gained a right of occupancy. The Chief Justice also expressed his doubt, whether a right of occupancy actually gained under section 6 was necessarily heritable, which doubt does not, however, appear to have been shared by the other four judges on the Bench.

In some other cases it was held³⁰⁻³² and presumed³³ by the Calcutta High Court that the consent of the landlord was not necessary to render a transfer valid if it was established that the transfer had the sanction of a custom. Thus the holdings of occupancy raiyats were not transferable save by custom.³⁴⁻³⁶ In the absence of custom no occupancy raiyat could transfer his holding without the consent of the landlord.³⁷⁻³⁸

Where an occupancy raiyat who held a holding not transferable without the consent of the landlord transferred that holding without such necessary consent, such transfer was incomplete and a nullity, for one of the elements required to make that complete, and without which the title was defective, was wanting. Therefore, as against the landlord, the purchaser had no rights.^{36-37,39} He could not require the landlord to take rent from him; nor, if the landlord had a right of entry, could he resist him in the exercise of that right.⁴⁰⁻⁴³

Though as against the landlord the purchaser had no right in such transactions, the transfer itself was not a void transaction and was binding on the contracting parties, namely, the transferor and the transferee, and all persons claiming through them, and that it was voidable only at the option of the landlord or his representative in interest. This view was founded on the doctrine of estoppel which was clearly recognised in a number of cases^{33-39,41-42} decided by the Calcutta High Court where it was

held that the raiyat himself could not recover the holding from the stranger to whom he had transferred it for valuable consideration because he was bound by his act of transfer.⁴³

As regards the rights of a transferee where the landlord had consented to the transfer of the holding of an occupancy raiyat from one raiyat to another, it was held⁴⁴ by the Calcutta High Court in 1866 that the possession of the transferor and the transferee were to be considered continuous and the right of occupancy to date from the time of the first holder. But subsequently the same High Court held in 1871⁴⁵ and 1872⁴⁶ that even if the landlord consented to the transfer, the transferee merely acquired a new holding on the same terms on which the original tenancy was held, and he was not entitled to make up his right of occupancy by adding the time during which his predecessor held that. The transferee, therefore, was supposed to stand or fall according to the period of his occupation. He did not derive any right from the vendor whose land he had purchased. In a Full Bench case decided in 1874 it was again held by the Calcutta High Court that the possession of the transferee could not be added to the possession of the transferor. In that case the suit was instituted by a purchaser of an estate at a sale for arrears of Government revenue. The purchaser sought to eject the defendant who claimed to be a transferee of the holding of an occupancy raiyat. His purchase of the holding of an occupancy raiyat had been recognised by the then landlord who had accepted him as his tenant. On behalf of the plaintiff, who had purchased the estate, it was argued that as the defendant had not himself been in occupation for twelve years, he had not acquired the status of an occupancy raiyat under section 6 of Act 8 of 1869, which had by then replaced section 6 of Act 10 of 1859. The question thus was, whether the possession of the transferee could be added to the possession of the transferor who at the date of the transfer had not acquired a right of occupancy. The answer to the question depended solely on the terms of section 6 of Act 8 of 1869. On the interpretation of that section it was ruled there that the right of occupancy could be enjoyed only by the person who actually cultivated or held the land and paid rent and had done so for a period of continuous twelve years; in other words, the section secured to a raiyat who had cultivated or held for twelve years a continuance of his cultivation or holding so long as he paid the rent. In support of this construction reliance was placed upon the proviso at the end of the section by which the holding of the person, from whom the raiyat inherited, was deemed the holding of the raiyat, indicating that except in that particular case, the holding must be entirely by the person who claimed the right.

There were expressions in the judgement of the Chief Justice, in the above-mentioned case, to the effect that a raiyat having a right of occupancy had a right which could not be transferred to some other person, but could be enjoyed only by the person who held or cultivated or paid the rent and had done so for a period of twelve years and not a right which he might, having acquired it, transfer or make use of as a subject of property. Similar observation was made by another judge of the Bench

who thought that the right of occupancy was rather of the nature of a personal privilege than a substantive proprietary right. When a raiyat sold his holding, his right of occupancy ceased. As Act 10 of 1859 or Act 8 of 1869 were considered to have imposed a restriction upon the proprietary right of a landlord and as the question of transferability was raised by the landlord, the Court emphasised that a raiyat could not claim under those Acts, against his landlord, anything more than the words clearly gave to him; it was held that there were no words of so doubtful a meaning that it was necessary for the Court to consider whether it would be just or equitable that the raiyat should have the power to transfer.

Upon an examination of the facts of all the decisions on the question of transferability of holdings of occupancy riyats, it was seen that whenever the question was raised, the validity of the transfer was challenged only by the landlord or a person claiming through or under him. This is not surprising. Although up to 1859 the rights of the riyats had been recognised by the courts, still they were not clearly defined or indeed held to exist in the terms expressed by Act 10 of 1859, which made the status of an occupancy raiyat a little more certain and less precarious than what it was under the Bengal Regulations. Thus, the only person concerned in the transfer of a raiyat's holding was naturally the landlord, and the law clearly stated that a transaction came into effect only if his consent had been obtained.

It was held⁴⁷ by the Privy Council also that under the provisions of Act 10 of 1859 a right of occupancy could not be transferred. Thus, what was understood to be the law in this respect, as administered by the Bengal *Sadar Diwani Adalat* before the enactment of Act 10 of 1859, was apparently also taken to be the law under that Act which maintained the *status quo*.

IV FETTERS LOOSENED

Act 8 of 1885 divided the riyats into occupancy riyats, non-occupancy riyats and under-riyats. Every person who had continuously held land in any village for a period of twelve years as a raiyat, either himself or through inheritance, became, on the expiry of that period, a settled raiyat of that village [*vide* section 20 (1)] with a right of occupancy in all the lands for the time being held by him as a raiyat in that village (*vide* section 21). Section 5 protected an occupancy raiyat from ejection from his holding by his landlord except on certain grounds mentioned therein. Section 89 provided that even in cases where eviction was allowed, a landlord could not evict the occupancy raiyat without obtaining a decree from a competent court for that purpose.

Section 11 provided that a tenure-holder could transfer his holding like any other immovable property. Section 18 enacted that a raiyat holding at a rent or a rate of rent, fixed in perpetuity, was subject to the same provisions with respect to the transfer of his holding as the holder of a permanent tenure. This meant that even he could freely transfer his holding. Section 26 dealt with the question of devolution of occupancy right on the death of the raiyat and provided that if a raiyat died intestate in respect

of a right of occupancy, that right shall, subject to any custom to the contrary, descend in the same manner as other immovable property.

The non-occupancy raiyats, who were left without any right at all under Act 10 of 1859, could be ejected under this Act only on one or more of the grounds mentioned in section 44 and not otherwise. The rights of under-raiyats were not mentioned in Act 10 of 1859. Though their rights were mentioned in Act 8 of 1885, they failed to get substantial benefits from the provisions of the Act. Under the provisions of section 85 they could get written leases of land up to a maximum period of nine years and could be ejected on the expiry of the leases. If they held land otherwise than under written leases, they were rendered liable to eviction at the end of an agricultural year following the year in which a notice to quit had been served upon them by their landlords (*vide* section 49). Illustration (2) of section 183 provided that they could acquire right of occupancy by custom or usage, if any.

As regards the under-raiyats and non-occupancy raiyats, not to speak of transferability of their holdings, there was nothing in Act 8 of 1885 from which even hereditability of their holdings could be established without any doubt.

To begin with the under-raiyats, the question whether the interest of an under-raiyat in his holding passed at his death to his heir or legal representative or not, it was held by the Calcutta High Court in 1894 that the right of an under-raiyat in his holding was not heritable.⁴⁸ No reasons, however, were given for this conclusion. The result of this ruling was that if the death of an under-raiyat took place before the season for reaping the crops, his heirs lost not only the land, but also the fruits of their ancestors' labour, as the tenancy of an under-raiyat was held to terminate on his death. This was clearly most unreasonable. In 1904, however, it was held⁴⁹ by the Full Bench of the Calcutta High Court that irrespective of custom or local usage the heir of an under-raiyat under an annual lease was entitled on the death of the under-raiyat to remain in possession of the land until the end of the then agricultural year, for the purpose, if the land had been sublet, of realising the rent, which might accrue during the year, or if not sublet, for the purpose of tending and gathering in the crops.

Illustration (2) of section 183 of Act 8 of 1885 provided that an under-raiyat could acquire a right of occupancy in his holding by custom or usage, if such a custom or usage existed. As regards the hereditability of occupancy rights acquired by the under-raiyats in their holdings, it was argued in a case, decided by the Patna High Court in 1930,⁵⁰ that because the right of an occupancy raiyat in his holding passed on to his heirs, an under-raiyat who had acquired the right of occupancy in his holding was deemed to have acquired a heritable right similar to that of an occupancy raiyat. But it was held by the Court that in the case of an occupancy raiyat, who acquired the right of occupancy in his holding under a statute, hereditability was a right which had been attached to his tenure by legislation; as it was only by the operation of the local custom that an under-raiyat could acquire a right of occupancy in his holding, in order to ascertain the incidents attaching to that right of

occupancy, it was necessary to ascertain the local custom on the point. Thus, the question whether an under-raiyat who acquired an occupancy right in his holding acquired also the rights of an occupancy raiyat as defined by Act 8 of 1885 depended, according to the decision of the Court, entirely on local custom. This argument was accepted by the Patna High Court in a case decided by it in 1933⁵¹ also.

Next, regarding the hereditability of the holding of a non-occupancy raiyat, it was held by the Calcutta High Court in a case decided by it in 1896⁵² that the right of a non-occupancy raiyat (who did not hold under any express engagement) in his holding was not heritable. The argument accepted in that case was that, because the legislature by section 26 of Act 8 of 1885 had expressly enacted that the holding of an occupancy raiyat was heritable, subject to the existence of any custom to the contrary, and that the Act was silent in this respect as regards the holding of a non-occupancy raiyat, the inference by implication was very strong that the framers of the Act intended that hereditability should not be an incident of the holding of the latter.

But section 20 (3) indicated that the holding of a non-occupancy raiyat was heritable, and that sections 79, 82 and clauses (c) and (e) of section 160 of the Act seemed to support the same view. Section 20, which defined a settled raiyat, provided in sub-section (3) in almost identical words the proviso of section 6 of Act 10 of 1859 that for the purpose of acquiring the status of a settled raiyat a person shall be deemed to have held as a raiyat any land held as a raiyat by the person whose heir he was. It is to be observed that the person referred to in this clause was a non-occupancy raiyat until he became a settled raiyat. This section appears to be almost decisive and shows that the hereditability of a non-occupancy raiyat in his holding followed from it, as it shows that the tenancy of the heir of a raiyat (the term there included a non-occupancy raiyat) was not a new tenancy so that if a non-occupancy raiyat died leaving an heir who occupied the land, the latter could count the period of occupation of his predecessor in computing the period of twelve years necessary to obtain the right of occupancy.

Section 79 gave to a non-occupancy raiyat the right of making improvements (that is, constructing, maintaining and repairing a well for the irrigation of his holding, with all works incidental thereto, and to erect a suitable dwelling-house for himself and his family) in his holding and section 82 entitled him to receive compensation for improvements made by him or by his predecessor in interest, in the event of his being ejected from his holding, thereby again implying that the right of a non-occupancy raiyat in his holding was heritable. Moreover, section 82 of Act 8 of 1885 seems to have been drawn from similar provisions in the Agricultural Holdings (England) Act of 1883 (46 and 47 Vict., c. 61). The general principle recognised by that Act was one conferring upon the tenant the right, on quitting his holding, to obtain from his landlord compensation for improvements of a specified kind. The word tenant as defined in that Act included his executors, administrators and assigns, etc. Section 82 of Act 8 of 1885 included the case of a non-occupancy raiyat and made the

right to compensation heritable. The implication from section 82 read with the corresponding provisions of the Agricultural Holdings (England) Act of 1883 seems to be irresistible that hereditability was a necessary incident of the interests of a non-occupancy raiyat in his holding.

Section 160 (c) included the holding of a non-occupancy raiyat, whereon dwelling-houses or other permanent buildings had been erected, or permanent gardens, plantations, tanks and canals had been laid, among the protected interests of a raiyat in cases of sales for arrears under decrees. Section 160 (e) also included among protected interests of raiyats the right of a non-occupancy raiyat to hold for five years at a rent fixed under section 46 by a court or under section 104 by a revenue officer.

It seems that in enacting these provisions of the law which conferred considerable benefits upon the non-occupancy raiyats, the legislature intended to recognise the status of a non-occupancy raiyat as higher than that of a mere tenant-at-will or an under-raiyat and attach to his holding the incident of hereditability. When acknowledging or conferring these rights, the legislature, it appears, did not intend that they should be illusory, dependent merely on the life of the raiyat, and liable to be lost to the heir or representative of that raiyat on his death. In the absence of a heritable right, the other rights conferred by the Act would have been shorn of much of their value and might indeed be delusive.

The Calcutta High Court, however, was of the opinion⁵³ that sub-section (3) of section 20 only showed that where the heir of a non-occupancy raiyat was allowed to hold on to the holding, he could tack the period of his own occupation of that holding to that of his predecessor to make up the period of twelve years necessary for the acquisition of the status of a settled raiyat and consequently the right of occupancy. As regards the other provisions of the Act, referred to above, the Court observed that the utmost that could be inferred from them was that some of the rights possessed by a non-occupancy raiyat, such as his right to claim compensation for improvements, or to remain in occupation of land in certain cases, might be claimable by his heir.

This interpretation of the law upon the strict terms might have caused a non-occupancy raiyat hardship in some cases. Section 79 of Act 8 of 1885 actually encouraged a non-occupancy raiyat to erect a suitable dwelling-house on his holding for the occupation of himself and his family, also to sink wells and effect other improvements on his land. Each of these involved heavy outlay on the part of the person who made them. If ejected, during his life time, he could recover compensation from his landlord (section 82); but the moment he died, if his holding was not heritable, the benefits of those improvements and the money sunk therein was lost to his heirs who seemed liable to ejection from the land and dwelling-house at the pleasure of the landlord.

Suppose a tenancy was created by a registered lease for nine years and the raiyat died after a year. He might have paid heavy *salami*.⁵⁴ If the tenancy was not heritable, all that money of the raiyat was lost.

Then, the law might also have worked harshly in the case of the under-raiyats. Section 85 provided that a sub-lease given by a raiyat shall not be valid against his landlord unless registered, and that a sub-lease shall not be admitted to registration if it purported to create a term exceeding nine years. This seems to imply, though it was nowhere expressly provided, that a sub-lease, if registered for a term not exceeding nine years, was valid against the raiyat's landlord, whether he had given his consent to it or not. But if the sub-lease was executed by a non-occupancy raiyat, whose holding was not heritable, that would certainly be rendered void by his death; for a person could not assign an interest in land exceeding that which he himself possessed, and if his rights were determined by his death, then so must also be the rights of his sub-lessee, though apparently protected by a lease executed and registered with the sanction of the law.

The non-hereditability of non-occupancy raiyats' holdings might have caused loss to the landlords as well. It had been held⁵⁴ that the holdings of occupancy raiyats being heritable the heirs of occupancy raiyats were liable for the rent of their predecessors' lands, whether they occupied them or not. But if non-occupancy raiyats' holdings were not heritable, their heirs who did not enter on occupation, could not be held liable by the landlords for the rents of those lands, and the landlords consequently might have lost money.

Thus, there was enough justification for the view that the holding of a non-occupancy raiyat was heritable. From the provisions of section 20(3) of Act 8 of 1885 it appears that the old law had gone no further; for the words 'the holding of the father or other person from whom a raiyat inherits shall be deemed to be the holding of the raiyat within the meaning of this section' which occurred in section 6 of Act 10 of 1859 corresponded with this section. If this passage did not recognise the hereditability of the holdings of raiyats it is difficult to understand what it meant, or with what object it was inserted. The suggestion offered by the judges in the case decided by them in 1896, in dealing with corresponding passage in section 20(3) of Act 8 of 1885, that it meant that if the landlord allowed the heir of a raiyat to remain in possession of the holding, after the death of his father or other ascendants, then alone he could reap the benefit of that provision in the law, seems to be misconceived because there was no reference to the consent of the landlord in the passage. It is difficult to understand what was there for the heir of a raiyat to inherit if it was not the holding. Beyond his land, his hut, and the crops in the land, a raiyat had nothing but a few articles of clothing and a few cooking utensils to leave to his heir.

The soundness of this decision of 1896 was, however, questioned by the judges in the reference to the Full Bench in 1904, where a contrary view was indicated. Doubt was also thrown on the correctness of this decision in the reference to the Full Bench in 1907,⁵⁵ where the referring judges were inclined to the view that the case decided in 1896 had not been correctly decided. When the case came to be heard by the Full Bench there was divergence of opinion among the judges and the point was left undecided, as no conclusive answer was given. It was held that the right of

a non-occupancy raiyat in his holding had not been made heritable by Act 8 of 1885, but if such a right was heritable at the time of the passing of that Act it had not been taken away by it. In 1909 it was again observed⁵⁶ that the state of authorities on the question whether the right of a non-occupancy raiyat in his holding was heritable or not was not satisfactory. It was the inconclusive result of the decision of the Full Bench of the Calcutta High Court in 1907 that necessitated another reference to another Full Bench of the Court in 1914 with the question whether the right of a non-occupancy raiyat in his holding was heritable, the answer to which was given by the Full Bench in the affirmative,⁵⁷ overruling the decision of 1896.

The Patna High Court also accepted this ruling in a case decided by it in 1917.⁵⁸

Coming to the question of transferability of the holdings of occupancy raiyats, Act 8 of 1885, though it expressly provided for hereditability of the holdings of occupancy raiyats (section 26), contained no provisions as to their transferability as in the case of permanent tenure-holders (section 11) and raiyats holding at fixed rates (section 18) except that it incidentally referred to the subject in clause (d) of sub-section (3) of section 178 saying that a contract between a landlord and an occupancy raiyat could not take away the right of an occupancy raiyat to transfer his holding according to the local custom or usage, and in section 183 read with its illustration (1) containing sufficient indication that the holding of an occupancy raiyat could be transferred by custom or usage being not inconsistent with or expressly or by implication modified or abolished by the provisions of that Act, and in section 73 providing for the liability of transferor and transferee jointly to the landlord for arrears of rent after the transfer when an occupancy raiyat had transferred his holding without the consent of the landlord. There was also a reference to the transferability of the holding of an occupancy raiyat in section 65 which enacted that an occupancy raiyat was not liable to ejectment for arrears of rent, but his holding was liable to sale in execution of a decree for the rent thereof and the rent was to be the first charge on the holding.

If speculations were permissible, it might, with some plausibility, be suggested that the legislature expressly dealt with the question of hereditability, as a doubt had been expressed on the point by the Chief Justice of the Calcutta High Court in 1867, and did not think it equally necessary to deal with the question of transferability, as the rulings of the Bengal *Sadar Diwani Adalat* in 1834 and 1855 had apparently never been called in question. If the legislature had thought fit to make the holding of an occupancy raiyat transferable, there was nothing to prevent it from doing so when all the cases cited earlier had decided that it was not transferable. This could be interpreted that the legislature did not intend that the holding of an occupancy raiyat should be made transferable. Again, by allowing only the landlords to sell the holdings of their occupancy raiyats for the realisation of their rents and not allowing the raiyats themselves to transfer them, the legislature had clearly created an anomalous situation. It is wondered if this anomaly was intentionally created. It might well

be that the legislature had thought it desirable not to make the holdings of occupancy raiyats liable to be cancelled for arrears of rent, as they were under the old law, and, as a compensation to the landlords, it was enacted that a landlord could bring the holding of an occupancy raiyat to sale for the satisfaction of any decree for arrears of rent due thereon; and yet the legislature might have thought it undesirable to make the holdings of occupancy raiyats freely transferable by the occupancy raiyats, or at the instance of their creditors, apprehending that the effect of such free transferability would, in many instances, be to place the holdings of the occupancy raiyats in the possession of money-lenders, and to place the raiyats themselves at their mercy. On the other hand, it might also be suggested with equal, if not greater, plausibility that the legislature dealt with the simpler question of hereditability and left alone the more complex problem of transferability. It was out of such scanty references in sections 65, 178 and 183, supplemented by the rulings under Act 10 of 1859, that the huge body of case law on the subject sprang up.

As Act 8 of 1885 had expressly declared the holdings of tenure-holders and raiyats holding at fixed rents or rates of rents as transferable and remained silent on the question of transferability of the holdings of occupancy raiyats, the Calcutta High Court interpreted⁶⁹ this omission as a clear indication that the legislature did not intend to make the holdings of occupancy raiyats transferable evidently relying on the maxim *expressio unius est exclusio alterius*. It further observed that if the holdings of occupancy raiyats were transferable under the law as it stood before the passing of Act 8 of 1885, they would continue to be transferable as there was nothing in the Act to the contrary. If on the other hand, they were not transferable before Act 8 of 1885 came into existence, then, they were not rendered transferable by that enactment, and the old law in this respect continued.

The law as understood before Act 8 of 1885 came into operation, and for nearly a dozen years after that, was that in the event of a transfer, voluntary or involuntary, of an occupancy holding, where no custom or local usage for its transferability existed, the landlord was the only person entitled to dispute the validity of the transfer, if it had been effected without his consent previously taken or assent subsequently obtained. The transfer of an occupancy holding in accordance with custom or local usage was valid even without the consent of the landlord.⁶⁰ This view held the field up to 1897. In that year, in a case decided by the Calcutta High Court, it was, however, contended by an occupancy raiyat, whose holding had been sold in execution of a decree for money, that the sale was invalid and had not operated to pass any title to the purchaser at the execution sale even though the landlord had recognised the purchaser. This contention prevailed and the proposition was enunciated for the first time that in the absence of a custom or a local usage to the contrary the holding of an occupancy raiyat was not saleable at the instance of the occupancy raiyat or of any creditor of his other than his landlord seeking to obtain satisfaction of his decree for arrears of rent. The above-mentioned decision of the Calcutta High Court excluded the case of a landlord seeking to sell

in execution of a money-decree because section 65 of Act 8 of 1885 had clearly made the holding of an occupancy raiyat saleable at the instance of the landlord in execution of a decree for rent. The Court came to the conclusion that ordinarily the only persons interested in impugning the validity of the transfer of the holding of an occupancy raiyat were the occupancy raiyat and the landlord; and that though no difficulty could arise in the way of the transfer being given effect to, where, in the event of a voluntary alienation by the raiyat, the transferee was accepted by the landlord; the position was wholly different where the transfer had been effected by a compulsory sale at the instance of a creditor of the raiyat.

Thus, according to this decision a landlord could, in satisfaction of his decree for arrears of rent, sell the holding of an occupancy raiyat but a creditor of the occupancy raiyat could not even with the consent of the landlord. But up to that time there had been no decision to the effect that the holding of an occupancy raiyat could not be transferred in execution where the landlord was a consenting party.

This was in reality a departure from the law administered for over sixty years according to which the transfer of the holding of an occupancy raiyat, whether voluntary or involuntary, could not be made effective except with the consent of the landlord. A number of subsequent decisions⁶¹⁻⁶⁶ followed and developed in a modified form the rule enunciated in the above-mentioned decision of 1897 and specified the circumstances under which a raiyat could impeach the validity of an execution sale even after it had taken place. In one of such cases it was held⁶⁷ by the Calcutta High Court that it was open to the raiyat in occupation of even a portion of the holding, that is, the co-sharer of the vendor, to question the validity of the transfer.

However, the current did not always flow in the same direction as is indicated by another set of decisions of the Calcutta High Court. These cases upheld the doctrine that an auction sale of the holding of an occupancy raiyat in execution of a money-decree held with the consent of the landlord was valid apart from the question of custom,⁶⁸ and if the auction purchaser had taken a settlement from the landlord, there was no question of custom.⁶⁹ Thus, even where there was a custom, the volition of the landlord was a great element⁷⁰ because in the case of a landlord's consent the question of custom did not arise.⁷¹⁻⁷³ These decisions seem to imply that there was nothing in the Act to indicate that the legislature intended to impose a disability on the involuntary transfers of holdings of occupancy raiyats with a view to protecting the helpless cultivators from rapacious money-lenders, as contended by the advocates of non-transferability of *raiya*ti holdings, a policy which actuated the framers of the Chota Nagpur Tenancy Act.⁷⁴

As regards the *locus standi* of the purchaser of the holding of an occupancy raiyat against that raiyat, it was held^{69,75-77} that a person who purchased, without the landlord's consent, a portion or the whole of the holding of an occupancy raiyat, where no custom or local usage of transferability of that holding existed, did not acquire any interest in that holding because the occupancy raiyat had no saleable interest in the holding. On the other hand, however, it was held or seemed to have been held

by necessary implication that the purchaser of the holding of an occupancy raiyat, where there was no custom or local usage of transferability of that holding, acquired a good title against his vendor, and persons claiming through him,⁷⁸⁻⁸² and it was further held⁸³ that a transfer of a portion of the holding of an occupancy raiyat, where no custom or local usage of transferability of that holding existed, did not entitle the landlord to re-enter on the portion so transferred. In view of these authorities, though they were not expressly referred to, it was held,⁸⁴ following three other cases,⁸⁵⁻⁸⁷ that a purchaser of a portion of the holding of an occupancy raiyat, even where there was no custom or local usage in favour of its transferability, acquired the rights of the transferor.

Upon an examination of the position when an occupancy raiyat effected a voluntary transfer of his holding for value by way of sale, it was revealed that the decisions in such cases were held valid on the application of what was sometimes described as the principle of estoppel, sometimes as the principle that the transferor was bound by his act or could not derogate from his act on the ground of equity, justice and good conscience. Thus, in a case decided by the Calcutta High Court in 1898 it was expressly held that when an occupancy raiyat had transferred his holding on the representation that he had a transferable interest therein, he could not, on principles of equity and good conscience, be permitted to prove against the transferee, who had paid consideration for the transfer, that he had no transferable interest to convey. It may be pointed out that this principle was also followed by the Calcutta High Court in similar cases decided under the provisions of Act 10 of 1859.^{38-39,41-42} On the other hand, the decisions in cases of involuntary sales, where the raiyats with knowledge had omitted or failed to object to the transfer, were based on the doctrine of acquiescence or waiver. There were manifest difficulties in the application of all such doctrines, because if the right of occupancy was a purely 'personal right' or a 'personal privilege', it is not easy to appreciate how it could in fact be made transferable by invoking the aid of one or the other of those principles of law. It is difficult to see how those doctrines could apply so as to validate a transfer in a case where, *ex-hypothesi*, there was nothing that could be transferred. If it was a personal right the application of the doctrine of estoppel and waiver was inconsistent with the nature of that right and that if it was an interest in land the application of those principles was superfluous.

Thus there was a considerable conflict of judicial opinion on the following points:

Firstly, whether a right of occupancy, in the absence of a custom or local usage for its transferability, was a right that was merely personal to the raiyat and as such could not be transferred at all, or was a right the transfer of which was valid against all persons other than the landlord, so that no one except the landlord could take exception to the validity of the purchaser's title. Before Act 8 of 1885 was passed, it was settled by a Full Bench of the Calcutta High Court in 1874 that a right of occupancy was a right that was personal to the raiyat and could not be transferred except with the consent of the landlord. Subsequent to

the passing of Act 8 of 1885, after a consideration of the provisions of that Act, the Calcutta High Court came to the same conclusion.⁵⁹

Secondly, whether a raiyat was entitled to raise an objection on the ground of non-transferability of his holding or not. As regards voluntary transfers of their holdings by the raiyats, it was held, both under Act 10 of 1859^{38-39, 41-42} and Act 8 of 1885,⁷⁸⁻⁸² that if a raiyat had bound himself up by a voluntary transfer, he could not, on the ground of estoppel, loose the fetters he had put upon himself. In case of involuntary transfers, however, it was held⁵⁹ that an occupancy raiyat whose holding had been sold in execution of a money-decree could himself raise the question that the holding was not transferable in a suit instituted by the purchaser for possession of the holding. This decision was followed, in a number of cases⁶¹⁻⁶⁶ where such a question was raised by the raiyat, with this qualification that if the raiyat was aware of the execution proceedings and having had an opportunity of objecting did not object, he was precluded from raising the question subsequently.

Lastly, whether a person who, without the landlord's consent, purchased from an occupancy raiyat the whole or a portion of his holding, where no custom or local usage of transferability existed, obtained any right in the holding. According to one opinion, where the holding of an occupancy raiyat, in the absence of a custom or a local usage for its transferability, was sold in execution of a money-decree, the purchaser acquired nothing by his purchase as the occupancy raiyat had no saleable interest in the holding.^{59, 75-77} A different view had been taken in other cases, namely, whatever might be the precise nature of the raiyat's interest which was purchased, it had a market value and the transfer was capable of being recognised by the landlord, and that the purchaser was entitled to be protected in the enjoyment of his purchase against all the world except possibly the landlord of the vendor,⁷⁸⁻⁸⁷ or in other words, as observed in one of those cases,⁸⁰ the transfer of an occupancy holding was not a void transaction, and was voidable only at the option of the landlord.

If the view that the transfer of the holding of an occupancy raiyat was valid against all persons excepting the landlord was correct, it is difficult to see how the raiyat himself, whose holding had been sold at an execution sale, could question the validity of the purchaser's title, or why the validity of the transfer should depend upon recognition by the landlord in cases where the landlord did not impugn the transfer. If, on the other hand, the holdings of occupancy raiyats were not transferable at all, there did not seem to be any reason why occupancy raiyats in possession of the land could not question the validity of the transfers, or why the purchaser should acquire a right of occupancy by the consent of the landlord, although he could by virtue of fresh settlement become a non-occupancy raiyat.

A Full Bench of the Calcutta High Court in 1914 solved to some extent the above-mentioned questions when it held⁸⁸ that in transfers, for value, of holdings of occupancy raiyats, apart from custom or local usage, the transfer was operative, (a) against the raiyat, where it was made voluntarily, or where it was made involuntarily and the raiyat with knowledge had failed

or omitted to have the sale set aside; (b) against the landlord in all cases in which it was operative against the raiyat, provided the landlord had given his previous or subsequent consent ; and (c) against all other persons where it was operative against the raiyat. Thus, the Full Bench laid down the proposition that in cases of voluntary transfers of holdings of occupancy raiyats the title passed from the transferor to the transferee although the validity of the transfer was liable to be questioned by the landlord if he was not a party to the transaction. As regards involuntary transfers, the Full Bench held that a sale, in execution of a money-decree, of the holding of an occupancy raiyat, in the absence of a custom or a local usage for its transferability, was valid and effectual against the raiyat if the sale was held with the consent of the landlord and the tenant had omitted to get the sale set aside. In other words, the Full Bench decision by implication held that an occupancy raiyat was entitled to have a sale of his holding in execution of a money-decree set aside after it had taken place, and that the holding could not be sold in execution of a money-decree where the raiyat objected to the sale before it took place. The holding of an occupancy raiyat, therefore, was taken to be property and that as such primarily transferable though with reference to the landlord it was subject to the doctrine of consent.⁸⁹ There were two more cases,⁹⁰⁻⁹¹ subsequent to the decision of the Full Bench, in which, as required by the rules of the Court, the proposition enunciated in the Full Bench decision⁸⁸ was applied.

In another case decided by the Calcutta High Court in 1916⁹² it was held that the holding of an occupancy raiyat, in the absence of a custom or local usage for its transferability, could not be sold in execution of a decree for money obtained against the occupancy raiyat, when that raiyat objected, even if all the landlords gave their consent to the sale. It was clearly laid down in two other cases⁹³⁻⁹⁴ that as an occupancy raiyat could not confer a title upon the purchaser without the consent of the landlord, so the landlord alone by his own act and without the concurrence of the occupancy raiyat could not create a title in the purchaser. This implied that the holding of an occupancy raiyat, where no custom or local usage of its transferability existed, could not be transferred unless both the landlord and the raiyat consented. The *ratio decidendi* in those cases was that the two must concur in order that the transfer might be valid. It was held that if the occupancy raiyats as a body desired a conversion of the personal nature of their right and the landlords acquiesced in that, the transfer could take place. There had to be mutuality in the transaction. All these decisions of the Calcutta High Court considerably loosened the fetters put upon the raiyats by its earlier decisions.

V LONG JUMP

The Patna High Court, in its first pronouncement on the subject, held⁹⁵ in 1916 that a decree-holder, not being the landlord of the holding, could not, against the will of an occupancy raiyat and without the express

consent of the landlord, cause a portion of the raiyat's holding to be sold in execution of a money-decree, there being no custom or local usage of transferability. In other words, an occupancy raiyat, for whose holding there was no custom or local usage of transferability, could object to the sale of a portion of his holding in execution of a simple money-decree against him.

In 1917, it was held⁹⁶ by the Patna High Court that even a *sixteen-anna*⁹⁷ (sole) landlord could not, in execution of a money-decree, sell the holding of his occupancy raiyat if the raiyat objected, unless the holding was transferable by custom or local usage. The view taken in this case was a logical deduction from the rule recognised in a case decided by the Calcutta High Court in 1916, as derivable from the propositions enunciated by its Full Bench in a case it decided in 1914, which, again, had substantially adopted the principle laid down in a case it decided in 1897. Thereafter also it was consistently held⁹⁸⁻⁹⁹ by the Patna High Court that an occupancy raiyat, in a village where no custom or local usage of transferability without the consent of the landlord existed, could object to the sale of his holding in execution of a money-decree obtained by a creditor who was not his landlord.

As mentioned earlier, these decisions of the Patna High Court were admittedly based on the decision pronounced in 1914 by the Full Bench of the Calcutta High Court. But, in the meantime, a Special Bench of the Calcutta High Court had considerably modified in 1920¹⁰⁰ the rule laid down in the decision of 1914 of the Full Bench. The Special Bench had unanimously held that the case of 1897 was wrongly decided and overruled that and subsequent decisions based upon that and almost settled all the points in controversy with regard to the right of an occupancy raiyat to transfer his holding. Up to that time the question in controversy was whether the right of an occupancy raiyat in his holding, in the absence of a custom or a local usage in favour of its transferability, was a personal right or an interest in land. If it was a personal right, it could not be transferred under the law and, therefore, there could not be any question of the estoppel, but strangely enough it was in the cases in which it was held that the right of an occupancy raiyat in his holding was not much distinguishable from a personal right that the doctrine of estoppel was employed. The Special Bench held that in principle there was no difference between the case of a voluntary sale made by an occupancy raiyat and an involuntary sale held by the court, if in each case the sale was consented to by the landlord and therefore an occupancy raiyat could not object to the sale of his holding, even where there was no custom or local usage of transferability, in execution of a money-decree obtained by a creditor not being the landlord if the landlord had consented to it. It further observed that even a sole landlord of an occupancy raiyat was competent to sell, in execution of a money-decree against the raiyat, his holding, whether the holding was or was not transferable by a custom or a local usage. This meant that the right of an occupancy raiyat in his holding, even where no custom or local usage for its transferability existed, was an interest or a right in land and the

application of the doctrines of estoppel and waiver was inconsistent with the nature of that right and therefore was superfluous.

So, according to the Special Bench decision of the Calcutta High Court, an occupancy raiyat could not object to the sale, voluntary or involuntary, of his holding if the landlord had agreed to it. But according to the decisions of the Patna High Court,^{95-96,98-99} based as they were on the decision of the Full Bench of the Calcutta High Court,⁹⁸ the occupancy raiyats could object. As cases of this nature were always coming before the Patna High Court, it was decided, in view of the decision of the Special Bench of the Calcutta High Court in 1920, to get this question settled by the Full Bench of the Patna High Court which overruled in 1922¹⁰¹ the cases decided by it in 1916,⁹⁵ 1917⁹⁶ and 1921,⁹⁸⁻⁹⁹ and following the Special Bench decision of the Calcutta High Court¹⁰⁰ negated the application of the principles of estoppel and waiver to transfers by an occupancy raiyat and held that the right of an occupancy raiyat in his holding was an interest in land and carried with it all the incidents of an immovable property. Thus, it followed that a sale of the holding of an occupancy raiyat, where no custom or local usage for its transferability existed, in execution of a money-decree, was valid against the raiyat, even in the absence of a landlord's consent, irrespective of whether the decree-holder was the landlord or a stranger because the right of an occupancy raiyat in his holding being an interest in land and not merely a personal right was, as such, saleable in execution as any other property of the raiyat for which he had disposing power. This decision of the Patna High Court was really a long jump from the position held by it as well as the Calcutta High Court till then in respect of transferability.

VI FETTERS REMOVED

In 1934, the longstanding dispute over the much vexed question of transferability of holdings of occupancy raiyats was solved. There were fifteen new sections, namely, 26-A to 26-O, dealing with the question, added¹⁰² to Act 8 of 1885, which brought this matter, till then left to be settled on the principle of *consuetudo loci est observanda*, under the express provisions of the Act. Section 26-A declared that an occupancy raiyat shall have the power to transfer his holding or any portion thereof, together with the right of occupancy therein, by sale, exchange, gift or will subject to the consent of the landlord. Section 26-D provided for the payment of a fixed rate of *salami* (called landlord's transfer fee), eight per cent of the consideration money, at the time of transfer. In 1938, section 26-A was replaced by a new section¹⁰³ which declared that the consent of the landlords was not necessary for any transfer and bequest of holdings of occupancy raiyats and that all such transfers were binding upon the landlords. At the same time section 26-D was repealed¹⁰⁴ and therefore the transfer fee stood abolished. The legal effect of the recognition of transfer was that the transferee acquired the status of an outgoing occupancy raiyat and became his successor in interest. Thus, the uncertainty regarding the

transferability of the holdings of occupancy raiyats, which had been one of the most fruitful sources of litigation, was set at rest by the legislature.

The confusion which had pervaded the discussion of this question can be attributed in a large measure to the ambiguity involved in the statement that a *raiya*t holding was not transferable except by a custom or a local usage. This implied three alternatives. In the first place, it was maintained that a *raiya*t holding was absolutely inalienable by its very nature. This view was possibly maintained towards the close of the eighteenth century, but had apparently few, if any, champions after that.¹⁰⁵ In the second place, the expression signified that the transfer of a *raiya*t holding, whether voluntary or involuntary, could not be made effective except with the consent of the landlord. This was the view maintained from 1834 to 1897. In the third place, the expression signified that a *raiya*t holding could not be transferred unless both the landlord and the raiyat consented. This was the view put forward for the first time in 1897 and prevailed up to 1938 when the *raiya*t holding was expressly made transferable without the consent of the landlord which completely removed the fetters put upon the occupancy raiyat till then in this respect.

VII. DESTINATION REACHED

In 1947, very important changes were made in the law with respect to the acquisition of right of occupancy by the non-occupancy raiyats. By Act 23 of 1947,¹⁰⁶ a new section, 21-A, was inserted in Act 8 of 1885, which enacted that every person, whether a settled raiyat of a village or not, that is, whether he had held the land for twelve years or not, shall have a right of occupancy in all land for the time being held by him as a raiyat in that village. This raised the status of all non-occupancy raiyats to that of occupancy raiyats. Thus, the status of all occupancy raiyats in Bihar was brought on a par with the status of the landholders in the raiyatwari areas of the country with the distinction that the landholders in the raiyatwari areas held their lands from the Government while the occupancy raiyats in Bihar held their lands from zamindars and tenure-holders.

The occupancy raiyats of Bihar reached their destination in 1950 when they became the counterparts of the landholders of the raiyatwari areas of the country when all the intermediary rights in Bihar were abolished by Act 30 of 1950 and the occupancy raiyats were declared to hold their lands directly from the Government.¹⁰⁷ Similarly, with the abolition of the zamindari system in Bihar in 1950, all ex-intermediaries (former zamindars or proprietors and tenure-holders of estates) also became the occupancy raiyats under the State with respect to all their lands used for agricultural or horticultural purposes which were in their *khas* (direct) possession including their private lands (a) let out under a lease for a term of years or under a lease from year-to-year, (b) used for agricultural or horticultural purposes and held in the direct possession of a temporary lessee of an estate or a tenure, and (c) used for agricultural or horticultural purposes forming the subject-matter of subsisting

mortgages on the redemption of which the intermediaries were entitled to recover possession thereof.¹⁰⁸

VIII IN RETROSPECT

In retrospect, the occupancy raiyats in Bihar, no doubt, became the owners of their holdings, but there came into being among them a very big class of absentee raiyats, owning very large holdings, who could be said to represent the old absentee landlords, with the result that the cultivating tenants, known as under-raiyats, commonly known as *bataidars* or sharecroppers, for whom this occupancy right with unrestricted right to transfer was intended, still remained as tenants-at-will and consequently formidable deterrents in the way of improving agriculture. *De jure* even an under-raiyat could acquire a right of occupancy, though he had no power to transfer his holding, *de facto* it was impossible for him to attain that status because there was no updating of the record-of-rights to enable him to reach that stage. No wonder, the State of Bihar continues to be one of the poorest, backward and feudal regions in the country.

This study of the transferability of *raiya*ti holdings in Bihar also reveals that the Courts have been slowly, but surely, changing their own interpretation of the same provisions of law with the passage of time in the course of hundred years—from 1834 to 1934. The continuous departure by the Courts from their earlier judicial pronouncements proves that the life of law is not logic, but experience,¹⁰⁹ and the departure probably was due to a change in economic conditions, though nowhere mentioned, which had brought into prominence problems that did not previously call for solution.

NOTES AND REFERENCES

Abbreviations of law reports used in this paper:

- | | |
|---------------|---|
| Ad & El | —Reports of Cases in the Court of King's Bench and Queen's Bench by John Leycester Adolphus and Thomas Flower Ellis, 12 volumes, 1834-1842. |
| A.I.R. Pat. | —All India Reporter, Patna Section. |
| C.L.J. | —Calcutta Law Journal. |
| C.W.N. | —Calcutta Weekly Notes. |
| I.C. | —Indian Cases. |
| I.L.R. Cal. | —Indian Law Reports, Calcutta Series. |
| I.L.R. Pat. | —Indian Law Reports, Patna Series. |
| L.R.H.R. | —The Law Reports, English and Irish Appeal Cases and Claims of Peerage, The House of Lords, by Charles Clark, 7 volumes, 1866-1875. |
| Pat. L.J. | —Patna Law Journal. |
| S.D.A.R. Ben. | —Sadar Diwani Adalat Reports, Bengal. |
| W.R. | —Weekly Reporter (D. Sutherland). |

Some examples for reading the citations in this paper:

1. The citation 'A.I.R. 1930 Pat. 562' is to be read for the 'All India Reporter, 1930, Patna Section, p. 562'.
2. The citation '1 W.R. 86' is to be read for the 'Weekly Reporter, Vol. 1, p. 86'.
3. The citation '5 W.R. 55 (Act X Rulings)' is to be read for the 'Weekly Reporter, Vol. 5, Act X Rulings Section, p. 55'.

¹Baden-Powell, B.H., *The Land Systems of British India*, Vol. III, Oxford, 1892, p. 129.

²The Bengal Settlement Regulation, 1793, Bengal Regulation 1 of 1793—Short title given by Central Act 5 of 1897.

³The formal codification of laws in India began with the Presidency of Bengal. The laws made by the Governor of that Presidency from 1793 to 1834 were known as 'Regulations' while all enactments passed thereafter, whether at the Centre or by the local (provincial or state) authorities, are called 'Acts'. For details please see D.C. Wadhwa, *Agrarian Legislation in India (1793-1966)*, Vol. I, Poona, 1973, pp. xi-xvi.

⁴The Recovery of Rents (Bengal) Act, 1859, Central Act 10 of 1859—Short title given as 'The Bengal Rent Act' by Central Act 1 of 1903.

⁵The Landlord and Tenant Procedure Act, 1869, Bengal Act 8 of 1869.

⁶The Bengal Tenancy Act, 1885, Central Act 8 of 1885. The word 'Bengal' in the short title was replaced by the word 'Bihar' by section 2(a) of the Bihar Tenancy (Amendment) Act, 1934, Bihar and Orissa Act 8 of 1934. Similarly, the original sub-section (3) of section 1 of the Act which provides for its local extent was also replaced in 1934, by sub-section 2(b) of the above-mentioned amending Act 8 of 1934, by a new sub-section (3) which expressly declared this Act to be in force in the districts of Bhagalpur (now Bhagalpur and Saharsa), Champaran (now East Champaran and West Champaran), Darbhanga (now Darbhanga, Madhubani and Samastipur), Gaya (now Aurangabad, Gaya and Nawadah), Monghyr (now Begusarai and Monghyr), Muzaffarpur (now Muzaffarpur, Sitamarhi and Vaishali), Patna (now Nalanda and Patna), Purnea (now Katihar and Purnea), Saran (now Gopalganj, Saran and Siwan) and Shahabad (now Bhojpur and Rohtas).

⁷The transferability of *raiya* holdings in the Chota Nagpur Division (now the North Chota Nagpur and South Chota Nagpur Divisions) is governed by the Chota Nagpur Tenancy Act, 1908, Bengal Act 6 of 1908. As regards the study of transferability of *raiya* rights in that area, please see D.C. Wadhwa, "Zamindars and their Lands" in *Zamindars, Mines and Peasants* edited by D. Rothermund and D.C. Wadhwa, New Delhi, 1978, pp. 120-126.

⁸The relationship of landlords and tenants in the district of Santhal Parganas is regulated by (a) The Santhal Parganas Settlement Regulation, 1872, Central Regulation 3 of 1872, (b) The Santhal Parganas Rent Regulation, 1886, Central Regulation 2 of 1886, and (c) The Santhal Parganas Tenancy (Supplementary Provisions) Act, 1949, Bihar Act 14 of 1949.

⁹For details of all these territorial changes please see D.C. Wadhwa, *Agrarian Legislation in India (1793-1966)*, Vol. 1, Poona, 1973, pp. 113-114.

¹⁰Also spelt as *Sudder Dewanny Adawlut*. *Sadar* means chief, *Diwani* means civil and *Adalat* means court. So, *Sadar Diwani Adalat* means chief civil court.

¹¹*vide* section 10 of the *Sudder Dewanny Adawlut Regulation, 1793, Bengal Regulation 6 of 1793*.

¹²The Bengal *Sadar Diwani Adalat* was abolished in 1862 by section 8 of the Indian High Courts Act, 1861, 24 & 25 Vict., c. 104.

¹³The Calcutta High Court was established on May 14, 1862, by the Letters Patent for the High Court of Judicature at Fort William in Bengal, dated May 14, 1862 (*vide General Statutory Rules and Orders made under enactments in force in*

British India, Government of India, Legislative Department, Vol. I, Second Edition, Calcutta, 1915, p. 23).

¹⁴The Letters Patent constituting the High Court of Judicature at Patna, dated February 9, 1916, published as Notification No. 635-C., dated February 22, 1916, issued under the provisions of section 1 of the Indian High Courts Act, 1861, 24 & 25 Vict., c. 104 (*vide General Statutory Rules and Orders made under enactments in force in British India*, Government of India, Legislative Department, Vol. I, Third Edition, Calcutta, 1926, p. 142).

¹⁵The Recovery of Arrears of Rent and Revenue Regulation, 1799, Bengal Regulation 7 of 1799.

¹⁶The Civil Procedure Regulation, 1793, Bengal Regulation 4 of 1793.

¹⁷A decree means the formal expression of an adjudication which, so far as regards the court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit (*vide* section 2 of the Code of Civil Procedure, 1882, Central Act 14 of 1882, and also section 2 of the Code of Civil Procedure, 1908, Central Act 5 of 1908, which replaced the former). The word 'decree' does not seem to have been formally defined till 1882.

¹⁸The Civil Procedure Regulation, 1814, Bengal Regulation 26 of 1814.

¹⁹Actual proprietors with whom estates were settled in perpetuity by the Government at an assessment fixed for ever. The zamindars, their heirs and lawful successors enjoyed those estates in absolute ownership as long as they paid such assessment (known as Government land-revenue) which was irrevocable, and not liable to alteration by any future Government (*vide* sections 4 and 7 of the Bengal Settlement Regulation, 1793, Bengal Regulation 1 of 1793—Short title given by Central Act 5 of 1897).

²⁰Landholders to whom the zamindars had transferred their proprietary rights.

²¹The Bengal Government Indemnity Regulation, 1822, Bengal Regulation 11 of 1822—Short title given by Central Act 1 of 1903.

²²*Constructions by the Courts of Sudder Dewanny and Nizamut Adawlut of the Regulations and Laws for the Civil Government of the Whole of the Territories under the Presidency of Fort William in Bengal*, Vol. II, Calcutta, 1839, p. 177.

²³By sections 1 and 2 of The Appellate Judges of Allahabad Regulation, 1831, Bengal Regulation 6 of 1831, a *Sadar Diwani* and *Nizamut Adalat* was established at Allahabad for the Western Provinces with effect from January 1, 1832, and it is found frequently noted, with regard to individual Constructions issued thereafter by the Calcutta Court or by the Western Court respectively, that the Western Court or the Calcutta Court, as the case might be, concurred in the Construction.

²⁴The Codifying Bengal Regulations Regulation, 1793, Bengal Regulation 41 of 1793.

²⁵The Construction of Regulations Regulation, 1796, Bengal Regulation 10 of 1796.

²⁶*Baboo Prosonokoomar Tagore v. Rammohun Doss*, (1855) 11 S.D.A.R. Ben. 14 [*vide The Indian Decisions* (Old Series), Vol. XIV, edited by the Lawyer's Companion Office, published by T.A. Venkasawmy Row and T.S. Krishnasawmy Row, Madras, 1916, p. 11].

²⁷*Degumber Mitter v. Ramsoonder Mitter*, (1856) 12 S.D.A.R. Ben. 617, at p. 628. [*vide The Indian Decisions* (Old Series), Vol. XV, edited by the Lawyer's Companion Office, published by T.A. Venkasawmy Row and T.S. Krishnasawmy Row, Madras, 1916, p. 95].

²⁸*Mussamut Taramonee Dossee v. Birressur Mozoomdar*, (1864) 1 W.R. 86.

²⁹*Ajoodhya Pershad v. Mussamut Imam Bandi Begum*, (1867) 7 W.R. 528 F.B.

³⁰*Juggut Chunder Roy v. Ramnarain Bhuttacharjee and others*, (1864) 1 W.R. 126.

³¹*Joy Kissen Mookerjee and others v. Raj Kissen Mookerjee*, (1864) 1 W.R. 153.

³²*Sreeram Bose and others v. Bissonath Ghose and others*, (1865) 3 W.R. 3 (Act X Rulings).

- ³³*Huromohun Mookerjee v. Ranee Lalun Monee Dasee and others*, (1864) 1 W.R. 5.
- ³⁴*Unnoporna Dossia v. Ooma Churn Doss and others*, (1872) 18 W.R. 55.
- ³⁵*Mussamut Shunkurputtee Thakoorain v. Mirza Saifoollah Khan and others*, (1872) 18 W.R. 507.
- ³⁶*Kirpa Nath Chakee v. Dyal Chand Pal and another*, (1874) 22 W.R. 169.
- ³⁷*Messers R. Watson & Co., v. Ranee Shurut Soonduree Debla*, (1869) 7 W.R. 395.
- ³⁸*Bootee Singh and others v. Moorut Singh and others*, (1873) 20 W.R. 478.
- ³⁹*Hureehur Mookerjee v. Jodoonath Ghose*, (1867) 7 W.R. 114.
- ⁴⁰*Joy Kissen Mookerjee v. Raj Kishen Mookerjee*, (1866) 5 W.R. 147.
- ⁴¹*Bibee Suhodra and others v. Maxwell Smith*, (1873) 20 W.R. 139.
- ⁴²*Nurendro Narain Roy v. Ishan Chunder Sen*, (1874) 22 W.R. 22.
- ⁴³These judgements of the Calcutta High Court were apparently based on the decisions in two English cases decided in 1837 and 1873. In the first case decided by the King's Bench in 1837 it was held that where one by his words or conduct wilfully caused another to believe the existence of a certain state of things, and induced him to act on that belief, so as to alter his own previous position, the former was concluded from averring against the latter a different state of things as existing at the same time (*vide Pickard v. Sears and Barrett*, 6 Ad & El 469). This principle was amplified and restated in another case decided by the House of Lords in 1873 where it was said that the foundation of that doctrine (doctrine of estoppel), which was a very important one, and certainly not one likely to be departed from, was that, that if a man dealing with another for value made statements to him as to existing facts, which being stated affected the contract, and without reliance upon which, or without the statement of which, the party would not have entered into the contract, and which being otherwise than as they were stated, left the situation after the contract different from what it would have been if the representation had not been made; then the person making that representation was, so far as the powers of a Court of Equity extended, to be treated as if the representation was true, and was to be compelled to make that good (*vide The Citizens' Bank of Louisiana and The New Orleans Canal and Banking Company v. The First National Bank of New Orleans, H. Hilbard, and Charles Chase*, 6 L.R.H.L. 352, at p. 360).
- ⁴⁴*Huro Chandra Goho and another v. A.D. Dunn*, (1866) 5 W.R. 55 (Act X Rulings).
- ⁴⁵*Tara Pershad Roy and others v. Soorjoo Kant Acharjee Chowdhry*, (1871) 15 W.R. 152.
- ⁴⁶*Hyder Buksh and another v. Bhubendro Deb Koonwar*, (1872) 17 W.R. 179.
- ⁴⁷*Chandrabati Koeri and another v. E.T. Harrington*, (1891) 18 I.L.R. Cal. 349 P.C.
- ⁴⁸*Keramula Sheik v. Afajan Bibi*, (1904) 31 I.L.R. Cal. 758.
- ⁴⁹*Arip Mandal v. Ram Ratan Mandal*, (1904) 31 I.L.R. Cal. 757.
- ⁵⁰*Muchi Ram Bagal v. Bhumij*, (1930) A.I.R. 1930 Pat. 562.
- ⁵¹*Shaila Bala Devi v. Ganganarayan Bhakat and others*, (1933) A.I.R. 1933 Pat. 457, at p. 458.
- ⁵²*Karim Chowkidar and another v. Sundar Bewa and others*, (1896) 24 I.L.R. Cal. 207.
- ⁵³An entrance fee levied from a new tenant at the beginning of his new tenancy or a gratuity or offering on receiving a lease.
- ⁵⁴*Peary Mohun Mookerjee v. Kumaris Chunder Sirkar and others*, (1892) 19 I.L.R. Cal. 790.
- ⁵⁵*Lakhan Narain Das v. Jainath Pandey*, (1907) 34 I.L.R. Cal. 516.
- ⁵⁶*Uday Chandra Das Bairagi v. Haridas Bairagi*, (1909) 13 C.W.N. 937.
- ⁵⁷*Midnapore Zemindary Company Ltd., v. Hrishikesh Ghose*, (1914) 41 I.L.R. Cal. 1108.
- ⁵⁸*Kalru Garbi v. Jangli Choudhari and others*, (1917) 37 I.C. 438.

- ⁵⁹*Bhiram Ali Shaik Shikdar v. Gopi Kanth Shaha*, (1897) 24 I.L.R. Cal. 355.
- ⁶⁰*Palakdhari v. Manners and others*, (1896) 23 I.L.R. Cal. 179.
- ⁶¹*Durga Charan Mandal and another v. Kali Prasanna Sarkar and another*, (1899) 26 I.L.R. Cal. 727.
- ⁶²*Sadagar Sircar and another v. Krishna Chandra Nath*, (1899) 26 I.L.R. Cal. 937.
- ⁶³*Majeed Hossein v. Raghur Chowdhry*, (1900) 27 I.L.R. Cal. 187.
- ⁶⁴*Sita Nath Chatterjee v. Atmaram Kar*, (1900) 4 C.W.N. 571.
- ⁶⁵*Sheikh Murullah v. Sheikh Burulla*, (1905) 9 C.W.N. 972.
- ⁶⁶*Peary Mohan Mukerjee v. Jote Kumar Mukerjee*, (1906) 11 C.W.N. 83.
- ⁶⁷*Agarjan Bibi v. Panaulla*, (1910) 37 I.L.R. Cal. 687.
- ⁶⁸*Ananda Das v. Rutnakar Panda*, (1903) 7 C.W.N. 572.
- ⁶⁹*Dwarka Nath Pal v. Tarini Sanker Ray*, (1907) 34 I.L.R. Cal. 199.
- ⁷⁰*Moulvi Buzlal Karim v. Satish Chandra Giri Mohant*, (1911) 10 I.C. 325.
- ⁷¹*Gahar Khalifa Bepari and another v. Kasimuddi Jamadar*, (1900) 4 C.W.N. 557.
- ⁷²*Durga Charan Agradoni v. Karamat Khan*, (1903) 7 C.W.N. 607.
- ⁷³*Bibijan v. Kishori Mohan*, (1906) 11 C.W.N. clix.
- ⁷⁴The Chota Nagpur Tenancy Act, 1908, Bengal Act 6 of 1908.
- ⁷⁵*Kuldip Singh v. Gillanders Arbuthnot & Co.*, (1899) 26 I.L.R. Cal. 615.
- ⁷⁶*Sadagar Sircar and another v. Krishna Chandra Nath*, (1899) 26 I.L.R. Cal. 937.
- ⁷⁷*Nissa Bibi v. Radha Kishore Mantkya*, (1906) 11 C.W.N. 312.
- ⁷⁸*Basarat Mandal v. Sabull Mandal*, (1898) 2 C.W.N. cclxxix.
- ⁷⁹*Bhagirath Changa Sheikh v. Hafizuddin and another*, (1900) 4 C.W.N. 679.
- ⁸⁰*Haridas Bairagi v. Udoy Chandra Das*, (1908) 12 C.W.N. 1086.
- ⁸¹*Samiruddin Munshi v. Benga Sheikh and others*, (1909) 1 I.C. ~~should be~~ 114.
- ⁸²*Shyama Charan Bhattacharyya v. Mokhoda Sundari Debi*, (1911) 10 I.C. 49.
- ⁸³*Kabil Sardar and others v. Chunder Nath Nag Chowdhry*, (1893) 20 I.L.R. Cal. 590.
- ⁸⁴*Omar Ali Majhi v. Bastruddeen Ahmad*, (1908) 7 C.L.J. 282, at p. 283.
- ⁸⁵*Bungshidhar Halder v. Kedar Nath*, (1896) 1 C.W.N. 114.
- ⁸⁶*Kunja Behari Mandal v. Sambhu Chandra Ray*, (1903) 8 C.W.N. 232.
- ⁸⁷*Azgar Ali v. Asaboddin Kazi*, (1904) 9 C.W.N. 134, at p. 136.
- ⁸⁸*Dayamayi v. Ananda Mohan*, (1915) 42 I.L.R. Cal. 172.
- ⁸⁹*Sheikh Dastur Ali v. Ram Kumar*, (1918) 22 C.W.N. 972.
- ⁹⁰*Badarennessa Chowdhurani v. Alam Gazi and others*, (1915) 29 I.C. 877.
- ⁹¹*Lala Deo Saran Lal and others v. Bubeswar Mandal*, (1916) 32 I.C. 1003.
- ⁹²*Narayani v. Nabin Chandra Chaudhuri*, (1917) 44 I.L.R. Cal. 720.
- ⁹³*Ram Sunder Karmokar v. Sheikh Lochan*, (1917) 38 I.C. 942.
- ⁹⁴*Bipin Chandra Barua v. Jagat Chandra Nath*, (1919) 51 I.C. 962.
- ⁹⁵*Sardari Kunwari v. Palknath Rai and others*, (1916) A.I.R. 1916 Pat. 176.
- ⁹⁶*J.A.J. MacPherson v. Debi Bhushan Lal and others*, (1917) A.I.R. 1917 Pat. 554.
- ⁹⁷The annas were the units of small currency before the introduction of the system of decimal coinage in the country. A rupee was divided into sixteen annas.
- ⁹⁸*Maheshwar Prasad Singh and others v. Babu Ram Rai and others*,⁹ (1921) A.I.R. 1921 Pat. 59.
- ⁹⁹*Dewan Ram Choudhry v. Atul Munder*, (1921) 6 Pat. L.J. 202.
- ¹⁰⁰*Chandra Binode Kundu v. Ala Bux Dewan*, (1921) 48 I.L.R. Cal. 15.
- ¹⁰¹*Jugeshwar Misra v. Nath Koeri*, (1922) 1 I.L.R. Pat. 317.
- ¹⁰²*Vide* section 10 of the Bihar Tenancy (Amendment) Act, 1934, Bihar and Orissa Act 8 of 1934.
- ¹⁰³*Vide* section 11 of the Bihar Tenancy (Amendment) Act, 1938, Bihar Act 11 of 1938.

¹⁰⁴*Vide* section 13 of the Bihar Tenancy (Amendment) Act, 1938, Bihar Act 11 of 1938.

¹⁰⁵*The Fifth Report from the Select Committee of the House of Commons on the Affairs of the East India Company*, dated July 28, 1812, edited by the Ven. Walter Kelly Firminger, Vol. II, Calcutta, 1917, pp. 84, 87-88.

¹⁰⁶*Vide* section 4 of the Bihar Tenancy (Amendment) Act, 1947, Bihar Act 23 of 1947.

¹⁰⁷*Vide* section 4 of the Bihar Land Reforms Act, 1950, Bihar Act 30 of 1950.

¹⁰⁸*Vide* section 6 of the Bihar Land Reforms Act, 1950, Bihar Act 30 of 1950.

¹⁰⁹Holmes, Oliver Wendell, Jr., *The Common Law*, 1881, Indian Reprint, New Delhi, 1975, p. 1.