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PART IV.

ACTS PASSED BY THE GOVERNMENT OF INDIA.

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 21st October 1868, and is hereby promulgated for general information:—

Act No. XXVII. of 1868.

An Act to exempt certain Instruments from the Indian Registration Act, 1866.

WHEREAS it is expedient to exempt expressly from compulsory registration under the Indian Registration Act, 1866, certain documents heretofore or hereafter executed by or in favour of Government; It is hereby enacted as follows:—

1. Nothing contained in the said Act shall be deemed to require, or to have at any time required, the registration of any of the documents or maps comprised in the Schedule hereto annexed.

But all such documents and maps shall for the purposes of sections forty-eight and forty-nine of the same Act, be deemed to have been and to be registered in accordance with its provisions.

2. Subject to such rules and the previous payment of such fees as the Local Government may from time to time prescribe in this behalf, documents and maps specified in the first, second, and third clauses of the said schedule shall be open to the inspection of any person applying to inspect the same, and, subject as aforesaid, copies of such documents shall be given to all persons applying for such copies.

3. A copy of every document mentioned in the fourth clause of the said schedule and executed on or after the first day of

May 1866, shall in the case of every such document heretofore executed, as soon as may be after the passing of this Act, and in the case of every such document hereafter executed, as soon as may be after its execution, be sent by the Local Government to the Registrar or to every Registrar within whose district the whole or any part of the immoveable property comprised in such document is situate, and shall be filed by him in his Book 1.

This Act to be read with Act XX. of 1866.

4. This Act shall be read with and taken as part of Act No. XX. of 1866.

SCHEDULE.

(1.) Documents issued, received, or attested by any officer engaged in making a settlement of revision of settlement of land revenue, and which form part of the records of such settlement.

(2.) Documents and maps issued, received, or authenticated by any officer engaged on behalf of Government in making or revising the survey of any land, other than waste land, and which form part of the record of such survey.

(3.) Documents which, under any law for the time being in force, are filed annually by patwáris or other officers charged with the preparation of village records.

(4.) Sanads, inám title-deeds, and other documents purporting to be or to evidence grants or assignments by Government of land or of any interest in land, in reward for special services.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (Legislative).

*See the
No. 359
dated 8
7/11/68*

The following Act of the Governor General of India in Council received the assent of His Excellency the Governor General on the 21st October 1868, and is hereby promulgated for general information:—

Act No. XXVIII. of 1868.

THE PANJAB TENANCY ACT.

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An Act to define and amend the law relating to the tenancy of land in the Panjáb.

WHEREAS it is expedient to define and amend the law relating to certain matters connected with the tenancy of land in the Panjáb; it is hereby enacted as follows:—

CHAPTER I.—PRELIMINARY.

1. This Act may be called "The Panjáb Tenancy Act, 1868," and shall extend only to the territories for the time being under the Government of the Lieutenant Governor of the Panjáb.

2. Nothing contained in this Act shall affect the operation of any decree of Court under which a tenant holds, or of any agreement between a landlord and a tenant, when such agreement is in writing or recorded by the proper officer in the record of a regular settlement sanctioned by the Local Government.

All entries in such record in respect of matters comprised in Chapters III., IV., V., and VI. of this Act shall, when attested by the proper officer, be deemed to be agreements within the meaning of this section.

3. In this Act, unless there be something repugnant in the subject or context—

"Land" means immoveable property for the time being subject to a settlement, whether regular or summary, of land-revenue;

"Rent" means whatever is payable by an occupant of land on account of the use or occupation thereof;

Any instalment of rent which is not paid on or before the day when the same becomes due, whether under a written agreement or according to law or local usage, shall be deemed to be, for the purposes of this Act, an arrear of rent;

"Tenant" means any occupant of land liable to pay rent therefor, but does not include an under-proprietor;

"Landlord" means any person entitled to receive rent payable by a tenant.

"Grand-father" includes the father of an adoptive father, "uncle" the brother of an adoptive father, and "grand-uncle" the adoptive father of an uncle;

"Representative" means an heir or any other person taking by operation of law, or by will, a beneficial interest in the property of a deceased person.

4. The Book Circular of the Financial Commissioner of the Panjáb, No. 33 of 1860, is hereby repealed.

CHAPTER II.—OF RIGHTS OF OCCUPANCY.

5. Every tenant who—

(1) has heretofore paid no rent and rendered no service, in respect of the land occupied by him, to the proprietor thereof for the time being, beyond the amount of land-revenue and village-cesses for the time being chargeable thereon, and whose father and grandfather, uncle and grand-uncle occupying the same land, have paid no rent and rendered no service in respect thereof to such proprietor, beyond the amount aforesaid;

(2) or who has involuntarily parted or shall involuntarily part with proprietary rights in any land otherwise than by forfeiture to Government; and who has continuously occupied or shall continuously occupy such land or any part thereof from the time of such parting;

(3) or who is at the date of passing this Act the representative of a person who settled as a cultivator in the village in which the land occupied by such tenant is situate, along with the founders of the village;

(4) or who is or has been jágirdár of the village or any part of the village in which the land occupied by him as tenant is situate, and who has continuously occupied such land for not less than twenty years—

shall be deemed to have a right of occupancy in the land so occupied.

6. Every tenant whose name appears in the records of a regular or revised settlement heretofore sanctioned by the Local Government, as having a right of occupancy in land which he or the person from whom he has immediately inherited has continuously occupied from the entry of his name or the name of such person (as the case may be) in such settlement, shall be presumed to have a right of occupancy in the land so occupied,

unless the landlord shall rebuttal of presumption. in a regular suit prove—

(1) that within the thirty years immediately before the institution of such suit other tenants of the same class in the same or in adjacent villages have ordinarily been ejected from their holdings at the will of the landlord; or

(2) that the tenant has voluntarily admitted before any officer employed in making or revising a regular settlement of land revenue or before any officer authorized to attest the entries in the record of such settlements that he is a tenant not having a right of occupancy, and that such admission has been recorded at the time by the officer so employed or authorized.

7. If the tenant has voluntarily exchanged the land, or any portion of the land, formerly occupied by him for other land belonging to the same landlord, the land taken in exchange shall, for the purposes of this Act, be held to be subject to the same right of occupancy as the land given in exchange would have been subject to if the exchange had not taken place.

8. Nothing herein contained shall be deemed to preclude any person claiming a right of occupancy on any ground other than the grounds hereinbefore specified from suing to establish such right.

9. No tenant shall be deemed to acquire a right of occupancy by mere lapse of time.

And no right of occupancy in the common lands belonging to a pattidári village-community shall be acquired under this Chapter.

CHAPTER III.—OF RENT.

1.—Enhancement.

10. No tenant shall, in the absence of an agreement or decree of Court to the contrary effect, be held liable, in a suit for arrears of rent in respect of any land, to pay rent exceeding in amount the rent payable by him in respect of such land for the last preceding agricultural year, unless a decree for the enhancement of the rent has been made as hereinafter provided.

The said Lieutenant Governor shall have power, from time to time, by notification in the official Gazette, to declare for all or any of the Districts under his government the day on which the agricultural year shall, for the purposes of this section, be deemed to commence.

11. The Court may decree that the rent previously payable by any tenant having a right of occupancy may be enhanced on any of the following grounds:—

1st Ground.—That the quantity of land held by him as tenant exceeds the quantity for which he has previously been liable to pay rent.

Rule.—In this case the Court shall decree rent for the land in excess at the same rate as that payable in respect of the land of a similar description and with similar advantages held by him of the same landlord.

2nd Ground.—That the rate of rent paid by him is below the rate of rent usually paid in the same or adjoining villages by the same class of tenants having a right of occupancy for land of a similar description and with similar advantages.

Rule.—In this case the Court shall enhance his rent to the amount claimed by the plaintiff not exceeding such rate.

3rd Ground.—That the rate of rent paid by him is,

if he belong to the class described in clause 1 of section five, more than fifty per centum,

if he belong to any of the classes specified in clause 2, 3, or 4 of section five, more than thirty per centum,

and if he belong to the class specified in section six, more than fifteen per centum,

below the rate of rent usually paid in the neighbourhood by tenants of the same class not having a right of occupancy for land of a similar description, and with similar advantages.

Rule.—In this case the Court shall enhance his rent to the amount claimed by the plaintiff not exceeding such rate, less fifty per centum, thirty per centum, or fifteen per centum, as the case may be.

12. If the revenue or any of the village-cesses is payable by the defendant, the rate to which his rent may be enhanced shall be reduced by the amount so payable.

13. After a decree has been passed under section ten, no suit shall lie against the defendant for re-enhancement of his rent until the expiration of five years from the date of such decree, unless in the mean time there has taken place a general revision of regular settlement, under which the revenue payable for the land comprised in the decree has been increased.

2.—*Abatement.*

14. Every tenant having a right of occupancy shall be entitled to claim abatement of the rent previously paid by him on either of the following grounds, and on no others—

(1) that the area of the land in his occupation has been diminished by diluvion or otherwise, or proved to be less than the quantity for which rent has been previously paid by him; or,

(2) that the productive powers of such land have been decreased by any cause beyond his control.

3.—*Remission.*

15. Notwithstanding anything hereinbefore contained, it shall be lawful for the Court, in making a decree for an arrear of rent,

if the area of the land in the tenant's occupation has been diminished by diluvion or otherwise, or if the produce of such land has been diminished by drought or hail, or other calamity beyond his control, to such an extent that the full amount of rent payable by him cannot, in the opinion of the Court, be equitably decreed, to allow such remission from the rent payable by him as may appear equitable:—

Provided that if the tenant hold a lease for an unexpired term of not less than five years, or have a right of occupancy, in a revenue-paying estate, no such remission shall be allowed to him, unless remission of revenue has been allowed on the same ground and by competent authority in respect of the same estate.

4.—*Rent in Kind.*

16. No commutation of rent in kind into rent in money, and no commutation of rent in money into rent in kind, shall take place without the consent of both the landlord and the tenant.

17. Whenever rent is taken by division of the produce in kind, or by estimate or appraisal of the standing crop, or other procedure of a similar nature, requiring the presence of the person entitled to the rent and of the cultivator, either personally or by their recognised agents,

if either party neglects to be present at the proper period, or if a dispute arises between the parties regarding such division, estimate, or appraisal, either party may present an application to the Court, on a paper bearing a stamp of eight annas, requesting that a proper person be deputed to make the division, estimate, or appraisal.

18. On receiving such application and such sum, to be paid in the first instance by the applicant, as the Court thinks sufficient to defray the costs of serving the notice and making the award next hereinafter mentioned, the Court shall issue a written notice to the other party requiring him to attend on the date and at the place specified in the notice, and shall depute a proper person to make the division, estimate, or appraisal, and to direct by whom the costs of each party are to be paid.

The award of such person in respect of the said division, estimate, or appraisal, and costs, shall be final, unless within three months from the date thereof either party institutes a suit to set it aside.

CHAPTER IV.—OF EJECTMENT.

19. No tenant having a right of occupancy in any land shall be ejected therefrom otherwise than in execution of a decree.

Such decree shall not be made, unless,

(1) at the date of the decree against such tenant for an arrear of rent in respect of such land has remained unsatisfied for fifteen days or upwards; or,

(2) the landlord tenders to the tenant, in addition to any compensation to which he may be entitled under sections twenty-seven and thirty-seven (but subject to deduction in respect of the arrear of rent, if any, payable by him), such compensation as the Court thinks fit, not less than fifteen, and not more than thirty, times the amount of the net annual profits receivable by the tenant in respect of such land on an average of the three years next before the date of the tender.

Nothing in the last preceding clause shall be deemed to apply to a tenant belonging to any of the classes specified in section five, or to a tenant when he, or the person from whom he has inherited, has continuously occupied such land for thirty years or upwards.

20. A tenant not having a right of occupancy may be ejected—

first, if a decree has been obtained against him for arrears of rent or for ejection; or
second, when he is not holding under an unexpired lease, or an agreement, or a decree of Court, by notice given by the landlord in manner herein-after mentioned.

21. Notwithstanding anything herein contained no tenant shall be ejected from the land in his occupation, except between the fifteenth day of April and the fifteenth day of June, unless while the rent in respect of such land is in arrear, he has failed to cultivate the land in accordance with the terms on which he holds it.

Notice of Ejection.

22. The notice of ejection shall be written in the vernacular language of the district: it shall specify the lands from which the tenant is to be ejected, and it shall inform him that, if he means to dispute the ejection he must institute a suit for that purpose on or before the fifteenth day of May next after the service of the notice, or quit the land on or before that date.

The said Lieutenant Governor shall determine what for the purposes of this section, shall be deemed to be the vernacular language of each District in the territories under his government.

23. On the landlord's application to the Tahsildar or other officer authorised to serve such notices, the notice shall be served by him on or before the fifteenth day of April, and the landlord shall pay the costs of service.

The notice shall, if practicable, be served personally on the tenant.

But if he cannot be found, service may be made by affixing the notice at his usual place of residence, or, if he does not reside in the district wherein the land is situate, at some conspicuous place in the village wherein the land is situate.

24. The said Lieutenant Governor shall have power, from time to time, by notification published in the official *Gazette*, not less than six months before such notification is to come into force, to fix, for the purposes of sections twenty-two and twenty-three, in all or any of the Districts under his government, any two days other than the days fixed in the same sections:

Provided that between the days so fixed by notification, there shall be an interval of at least one month.

25. If the tenant on whom such notice of ejection has been served fails to institute, on or before the fifteenth day of May next after the service, or, in case the said Lieutenant Governor fixes for the purpose of sec-

tion twenty-two any day other than the said fifteenth day of May, then on or before the day so fixed, a suit to contest his liability to be ejected, his tenancy of the land in respect of which the notice has been served shall be held to cease on that day.

Assistance to eject.

26. If no such suit be brought, or if such suit be brought and dismissed, and the landlord require the assistance of the Court to eject any person whose tenancy is alleged to have ceased under the provisions of section twenty-two, he may apply for such assistance; and if the Court be satisfied that notice of ejection was duly served on such person, it shall, subject to the provisions of section nineteen, give such assistance accordingly.

Nothing done by the Court under this section shall affect the right of any tenant to institute a suit against his landlord on account of illegal ejection, and to recover compensation for the same.

Growing Crops.

27. Any tenant ejected in accordance with the provisions of this Act shall be entitled to receive from the landlord the value of any growing crops or other ungathered products of the earth belonging to such tenant, and being on the land at the time of the ejection:

Provided that if the land has been sown or planted by the tenant after the service on him of the notice mentioned in section twenty, he shall not be so entitled, unless, after such service, the landlord has expressly authorised him to continue to occupy the land.

CHAPTER V.—OF RELINQUISHMENT, LEASES, AND UNDER-LEASES, ALIENATION, AND SUCCESSION.

1.—Relinquishment.

28. Every tenant shall be liable to pay the rent payable in respect of the land in his occupation for the ensuing agricultural year, unless on or before the first day of January next before the commencement of that year, he gives notice to the landlord of his intention to relinquish such land before the commencement of such year, and relinquishes it accordingly, or unless the land has been let to any other person by the landlord.

29. The said Lieutenant Governor shall have power from time to time by notification in the official *Gazette* to declare for all or any of the Districts under his Government the day on which the agricultural year shall for the purposes of section twenty-eight be deemed to commence, and in lieu of the said first day of January to substitute for the purposes of section twenty-eight in all or any of the same Districts, such day as he thinks fit.

30. If the tenant relinquishes land the according to his said notice, he shall be discharged from all liability to pay the rent which would otherwise have accrued due in respect of such land after the date of the relinquishment.

31. If the landlord or his recognised agent refuse to receive such notice, the tenant may apply to the *Dahsildar* or proper officer, and written notice shall thereupon be served by him on such landlord or agent, and the tenant shall pay the costs of service.

The notice shall, if practicable, be served personally on the landlord or agent.

But if he cannot be found, service may be made by affixing the notice at his usual place of residence, or, if he does not reside in the district wherein the land is situate, at some conspicuous place in the village wherein the land is situate.

2.—Leases and Under-leases.

32. Every tenant having a right of occupancy may let or under-let the land in his occupation or any part thereof:

Provided that nothing in the former part of this section shall be deemed to affect any agreement on the part of a lessee not to let or sub-let. that he will not, or will not without the previous consent of the lessor or his representative, under-let or part with the possession of the said land or any portion thereof.

33. Every person to whom land is let or under-let under section thirty-two shall in respect of such land, and so far as regards the landlord and his representative, be subject to all the liabilities under this Act to which the lessor or under-lessor would have been subject in respect of such land, and so far as regards such landlord and his representative, in case the lease or under-lease had not been made.

3.—Alienation.

34. Any tenant having a right of occupancy claimable in accordance with the terms of any of the clauses of section five may alienate the land in his occupation, or any part thereof:

Provided that in every such case the land or part aforesaid shall be offered for sale in the first instance to the landlord at the market-value, and shall not be alienated to any other person unless the landlord shall, for the space of one month, refuse or neglect to complete the purchase.

Every other tenant may alienate the land in his occupation, or any part thereof, with his landlord's previous consent, but not otherwise.

35. Every person other than the landlord, to whom land is alienated under section thirty-four, shall, in respect of such land, have the same rights and be subject to the same liabilities as the tenant making the alienation.

36. When a tenant having a right of occupancy in any land dies his right shall devolve on his male lineal descendants (if any), and, failing such descendants, the right shall go to his male collateral relatives: provided that the common ancestor of the deceased and his said relatives shall have occupied such land.

As among descendants and collateral relatives claiming under this section, such right shall devolve and go as if it were land left by the deceased in the village in which such land is situate.

CHAPTER VI.—OF COMPENSATION FOR TENANTS' IMPROVEMENTS.

37. If any tenant, or, in the case of a tenant with a right of occupancy the person from whom he has inherited, makes any such improvements on the land in his occupation as are hereinafter mentioned, the rent payable by him or his representative in respect of such land shall not be enhanced, nor shall he or his representative be ejected from the same land, unless and until he or his representative, as the case may be, has received compensation for the money or labour, or both, expended in making such improvements by him, or the person from whom he has inherited, or whom he represents, within thirty years next before the date of such enhancement or ejection.

38. The word "improvements," as used in section thirty-seven, means works by which the annual letting-value of the land has been, and at the time of demanding compensation, continues to be, increased, and shall comprise—

1st, the construction of works for the storage of water, for the supply of water for agricultural purposes, for drainage, and for protection against floods; the construction of wells, the reclaiming and clearing of waste lands, and other works of a like nature;

2nd, the renewal or reconstruction of any of the foregoing works, or such alterations therein, or additions thereto, as are not required for maintaining the same, and which increase durably their value.

39. Such compensation may, at the option of the landlord or his representative, be made—

- (1) by payment in money;
- (2) by the grant of a beneficial lease of the land by the landlord or his representative to the tenant or his representative; or
- (3) partly by payment in money, and partly by the grant of such lease as aforesaid.

40. In case of difference as to the amount or value of the compensation tendered, either party may present an application to the Court on a paper bearing a stamp of eight annas, stating the matter in dispute, and requesting a determination thereof.

Notice of such application shall be served on the other party by the proper officer and the applicant shall pay the costs of service.

On receiving such application, the Court shall, after taking such evidence as the parties or either of them may adduce, and after making such further inquiry (if any) as it may deem necessary, shall determine (as the case may be) the amount of the payment, or the terms of the lease, or both:

Provided that, in determining such amount or value, the Court shall take into account any assistance given by the landlord, either directly by money, material, or labour at the time of making such improvements, or indirectly by subsequently allowing the tenant to hold at a rate of rent more favourable than the rate at which he otherwise would have held.

41. If in any case a landlord tenders to a Tenant of lease for tenant a lease of the land twenty years to bar right in his occupation, for a term of not less than twenty years from the date of the tender, at the annual rent then paid by the tenant, or at such other annual rent as may be agreed upon, such tender, if accepted by the tenant, shall bar any claim by him or his representative in respect of improvements previously made on such land by the tenant or the person from whom he has inherited.

CHAPTER VII.—OF PROCEDURE.

42. Cases cognizable under sections five, six, eleven, fourteen, nineteen, twenty, and twenty-five, shall, unless otherwise provided for by any law for the time being in force, and subject to the provisions of section twenty-one of Act No. XIX. of 1865 (to define the jurisdiction of the Courts of judicature of the Panjáb and its dependencies), be heard in the Civil Courts other than the Courts of Small Causes, unless when such Courts of Small Causes shall have been specially empowered by the Local Government, under Act No. XI. of 1865, section six, to hear such cases.

Applications under sections seventeen, twenty-three, twenty-six, and thirty-one shall be deemed to be proceedings on the Revenue side; they shall be subject to the rules of procedure for the time being in force in such cases; and all orders on such applications shall be appealable to the Financial Commissioner of the Panjáb.

43. The plaint in every suit under sections five, six, eleven, fourteen, and twenty-five, shall bear a stamp of eight annas.

44. The procedure now in force in the Panjáb for the recovery of rent shall, except in so far as it is inconsistent with the provisions of this Act, continue to be in force.

45. All proceedings of officers of Government in making or revising, prior to the passing of this Act, settlements of land-revenue shall, so far as such proceedings are consistent with the provisions of this Act, and subject to appeal and revision when an appeal or a revision is provided, be deemed to have been taken in accordance with law.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Dept. (Legislative.)