

BOMBAY TENANCY AND AGRICULTURAL LANDS ACT, 1948

Tenancy, Tenant, Deemed tenant

Ordinarily use and occupancy of land of another person on a rental basis is known as tenancy and "tenant" means a lessee, whether holding under in instrument, or under an oral agreement, and includes a mortgagee of a tenant's rights with possession. However under the above act, tenancy means the relationship of land lord and tenant and tenant means a person who holds land on lease and includes-

- a) a person deemed to be tenant under Section 4;
- b) a person who is ¹protected tenant; and
- c) a person who is permanent tenant

And the word landlord shall be construed accordingly.

¹Protected tenant: A person is protected tenant if he is tenant on some notified dates declared by the government under the law. This step is taken to protect tenant from evection by landlord.

Section 4 of the above act says that,

A person lawfully cultivating any land belonging to another person shall deemed to be tenant if such land is not cultivated personally by the owner and if such person is not-

- a. member of the owners family, or
- b. a servant on wages payable in cash or kind but not in crop share or a hired labourers cultivating the land under the supervision of the owner or any member of the owner's family, or
- c. a mortgage in possession.

The law recognizes two classes of tenants, one contractual and other can be described for brevity sake "deemed tenant".

Regulation of rent

Under the system, the small farmers and landless people lease-in land for cultivation from rich landowners. These landless cultivators pay rent in kind to the landowners in return for land. The overall system of collection of rent was based on exploitation. Considering the return on investment in other sectors of economy, these rents were excessive by any standard of social justice. Therefore it was necessary to regulate the rent by enacting legislation.

Rent is ordinarily liable to fixed by agreement of parties, however under section 8 of the above act it is provided that maximum rent should not exceed five times the assessment

Security of tenure for tenants

Tenants did not have security of tenure and could be evicted from the land whenever landlord so desired. The security of tenure provides some incentives to tenants to make certain improvements of permanent nature on the land they cultivate, provides a congenial atmosphere in which the agriculturist feels sure of reaping the fruits of his labour.

Under Section 14 of above act provides security of the tenure so long as tenant continue paying the rent, not doing any act which is destructive or permanent injurious to the land, cultivating the land personally and not using land for the non agricultural purposes.

Land to the tiller

Zamindari and Raiyatwari were two main settlement systems in India.

Zamindari:-

Under Zamindari system, the land was held by a person who was responsible for the payment of land revenue. Zamindars were employed by the Mughals to collect taxes from peasants. The practice was continued under British rule. Zamindar could acquire the land mostly free of charge from the government during the British rule. They were renting the land to the cultivators. This land system created a class of intermediary between the State and the actual tillers of the soil.

Raiyatwari:-

Raiyat means cultivator or peasant and Raiyatwari means a system of revenue assessment and collection in which the government officials dealt with the actual cultivator and not with an intermediary.

In years 1803 and 1814 Marathas defected by British, with the result Western India was joined in Bombay province. Small kingdoms of nearby area were also merged in Bombay Province for one or other reasons. Thus Bombay Province thus formed became quite sizable. This region was under influenced of Raiyatwari system. It was decided at time to continue existing land revenue system.

Although under the Raiyatwari system no intermediaries were recognized, during the course of time under this system also influential *Raiyats* emerged as big landholders and rented land to peasant. Thus new class of intermediaries had emerged.

These intermediaries had no interest in land management and improvement. There was no limit on collections of rent from the actual cultivators. In view of the above circumstances to abolish intermediary between government and tiller, the policy was framed for "Land to the tillers". The Section 32 of the above act provides compulsory transfer of ownership rights of tenanted lands to the tenants from 1st April 1957 which is known as the "Tillers' Day".

There is complete sale and purchase on the tiller's day. The title of landlord passes immediately to the tenant on the tiller's day.

Fixing the price of land:

After the tiller's day under section 32 G, Tribunal shall call tenant-purchaser and land lord to fixed the price of land. Where tenant fails to appear or unwilling to purchase the land, tribunal shall declare that the tenant is not willing to purchase the land and that the purchase is ineffective. If no such declaration is made by the Tribunal, tenant's right to purchase the land remains intact. The land not purchased by tenant will be taken over by government for allotting same to the persons of the priority list. Purchase price shall be six times rent of the land in case of permanent tenant and shall not be more than two hundred times of assessment in case of other tenants. After payment of purchase price, the tribunal shall issues a certificate of purchase. The so issue shall be conclusive evidence of purchase.

Restrictions on transfer of land purchased or sold under Section 43 of this act:

Lands purchased by tenant under the provision of the act are not allowed to transfer land without permission of collector. The collector may grant permission for transfer of land in any of the following circumstances, namely:-

- a. That the land is require for agricultural purpose by industrial or commercial undertaking in connection with any industrial or commercial operations carried on by such undertaking;
- b. That the transfer is for the benefit of any educational or charitable institution;

- c. That the land is required by a co- operative farming society;
- d. That the land is being sold in execution of a decree of a Civil Court or for the recovery of arrears of land revenue under the provision of the code;
- e. That the land is being sold bona fide for any non agricultural purpose;
- f. That the land is being sold by a land owner on the ground that –
 - i. He is permanently giving up the by profession of an agriculturist, or
 - ii. He is permanently rendered incapable of cultivating the land personally;
- g. That the land is being gifted in favour of-
 - i. The bodies or institution mentioned d in section 88A and clauses a & b of section 88B or
 - ii. A member of land-owners family;
- h. That the land is being exchanged-
 - i. With the land of equal or nearly equal value owned and cultivated personally by the member of the same family; or
 - ii. With the land of equal or nearly equal value situate in the same village owned and cultivated personally by another land owner with a view to forming compact block of his holding or with view to having better management of the land:

Provided that ,the total land held and cultivated personally by any of the parties to the exchange whether as a owner or tenant or partly as does not exceed the area as a result of exchange;

- i. That the land is being leased by a land owner who is a minor; or a widow or person subject to any physical or mental disability or the member of the armed forces or among the land owners holding the land jointly;
- j. That the land is being portioned among the heirs or survivors of the deceased land owner;
- k. That the land is being mortgaged in favour of society registered or deem to be registered under the Maharashtra Co-op Societies Act 1960 for raising a loan for paying the purchase price of such land.
- l. That the land is being transferred to the person who by reason of acquisition of his land for any development project has been displaced and requires to be resettled.

Where sanctioned for sale of land given in the circumstances specified in the clauses a, b, c, e, or f it shall be subject to the condition of the land owner paying to the State Government a nazrana equal to 40 times assessment of the land.

In the case of portioned sanctioned under clause “j” it shall be subjected to the condition that the are allotted to each sharer shall not be less than the unit specified by the State Government under clause c of sub-section I of sub-section 27

Transfer to non agriculturist barred under Section 63

No sale, gifts, exchange or lease of any land shall be valid in favour of person who is not an agriculturist. However collector may grant permission for transfer under the below mentioned conditions:

- a) Such a person bona fide requires the land for a non agricultural purposes; or

- b) The land is required for the benefit of an industrial or commercial undertaking or an educational or charitable institution; or
- c) Such land being mortgaged, mortgagee has obtained from collector a certificate that he intends to take to the profession of an agriculturist and agrees to cultivate the land personally; or
- d) The land is required by co-op society; or
- e) The land is required for cultivating it by a person, who, not being an agriculturist, intends to take to the profession of agriculture and to whom collector has given certificate that such person is intended to take to the profession of agriculture and is capable of cultivating land personally; or
- f) Such land is being sold in execution of decree of a civil court, or recovering arrear of land revenue.

Transfer to non agriculturist for bona-fide industrial use:

No permission is required to sell the land to the person who may or may not be an agriculturist for the purpose of bona-fide industrial use if the land situates within the industrial zone of a draft plan or final regional plan or draft of final town planning scheme prepared under the MRTP Act 1966 and the area where no such plans or scheme exists.