The Non-Agricultural Tenancy Act

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The
NON-AGRICULTURAL TENANCY ACT, 1949

(Act No. XXIII of 1949)

SECOND EDITION
1985

The
DHAKA LAW REPORTS OFFICE
DHAKA.

Tk. 50.00

Published by
OBAIDUL HUQ CHOWDHURY,
Printed by
ZAHED OBAIDUL HUQ CHOWDHURY
AT
AL-AFSAR PRESS, MALIBAGH,
DHAKA—17

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The [2]Non-Agricultural Tenancy Act, 1949.

Act. No. XXIII of 1949[1]

[20th October, 1949.]

An Act to make better provision relating to the law of landlord and tenant in respect of certain non-agricultural tenancies in [Bangladesh].

Whereas it is expedient to make better provision relating to the law of landlord and tenant in respect of certain non-agricultural tenancies in [Bangladesh] ;

It is hereby enacted as follows:—

CHAPTER I

Preliminary.

1. SHORT TITLE, EXTENT AND COMMENCEMENT.—(1) This act may be called the [2][**] Non-Agricultural Tenancy Act, 1949.

(2) It extends to the whole of [Bangladesh].

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1. For Statement of Objects and Reasons, see Dacca Gazette, Extraordinary, dated the 14th January, 1949, Pt. IVA, p. 111 ; for proceedings in the Assembly, see the proceedings of the meetings of the East Bengal Legislative Assembly held on the 12th March, 2nd, 4th, 8th, 9th and 11th April, 1949.

The Act was extended to those areas of the district of Mymensingh which were known as "Partially Excluded Areas" immediately before the coming into force of the Constitution which was abrogated by the Presidential Proclamation of the 7th October, 1958. vide notification No. 4997 L. R. dated the 19th October, 1949, published in Dacca Gazette. Extraordinary, dated the 20th October, 1949, Pt. I, p. 830.

2. The words "East Bengal" omitted by P.O. 48 of 1972

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(3) It shall come into force on such date[3] as the Government may, by notification in the Official Gazette, appoint.

2. DEFINITIONS.—In this Act, unless there is anything repugnant in the subject or context,—

(1) "Bengali year" means a year ending on the last day of the Bengali month of Chaitra;

(2) [4][Dy. Commissioner] includes any officer appointed by the Government to perform all or any of the functions of a [4][Dy. Commissioner] under this Act;

(3) "landlord" means a person immediately under whom a non-agricultural tenant holds;

(4) "Non-agricultural land" means land which is used for purposes not connected with agriculture or horticulture and includes any land which is held on lease for purposes not connected with agriculture or horticulture irrespective of whether it is used for any such purposes or not, but does not include—

(a) a homestead to which the provisions of section 182 of the Bengal Tenancy Act, 1885, (VIII of 1885) apply,

(b) land which was originally leased for agricultural or horticultural purposes but is being used for purposes not connected with agriculture or horticulture without the consent either express or implied of the landlord, if the period for which such land has been so used is less than twelve years, and

(c) land which is held for purposes connected with the cultivation or manufacture of tea:

Provided that where an order has been made under section 72 converting a parcel of land which is not non-agricultural land into a tenancy to which the provisions of this Act apply such land shall be deemed to be non-agricultural land;

(5) "Non-agricultural tenant" means a person who holds non-agricultural land under another person with consent of

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3. The Act came into force with effect from the 20th October, 1949, vide notification No. 4995 L. R., dated the 19th October, 1949, published in Dacca Gazette, Extraordinary, dated the 20th October, 1949, Pt. I, p. 830

4. Subs. for "Collector" by E. P. Ord. IX of 1967.

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that person and is, or but for a special contract would be, liable to pay rent to such person for that land and also includes the successors-in-interest of the former but does not include any person who holds any such land on which any premises occupied by such person are situated if such premises have been erected, or are owned by the person to whom such occupier is, or but for a special contract would be, liable to pay rent for such occupation;

Explanation.—In this clause "premises" mean any building such as a house, manufactory, warehouse, stable, shop or hut whether constructed of masonry, bricks, concrete, wood, mud, metal or any other material whatsoever and includes any land appertaining to such building.

(6) "prescribed" means prescribed by rules made under this Act;

(7) "pucca structure" means any structure constructed mainly of brick, stone or concrete or any combination of these materials;

(8) all words and expressions used but not defined in this Act and used in the Bengal Tenancy Act, 1885, (VIII of 1885) or the Transfer of Property Act, 1882 (IV of 1882), have the same meanings in those Acts.

S. 2 (4): The expression 'non-agricultural land' has been defined in section 2 (4) of the Non-Agricultural Tenancy Act. It means land which is used for purposes not connected with agriculture or horticulture and includes any land which is held on lease for purposes not connected with agriculture or horticulture irrespective of whether it is used for any such purposes or not.

S. M. Basiruddin Vs. Zahurul Islam Chowdhury (1983) 35 *DLR (AD)* 230.

S. 2 (4) (b) : User is the important point in determining whether a particular land is non-agricultural.

The issue if particular piece of land is a non-agricultural land and if so whether it can be a fit subject for pre-emption under section 26F of the Bengal Tenancy Act has first to be tested whether the land is a non-agricultural land as defined under the provisions of Non-agricultural Tenancy Act and although the trend of decisions previous to the enactment of the Non-Agricultural Tenancy Act indicated that the primary test was to

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find the original purpose of the tenancy yet according to the language as employed in section 2 (4) (b) of the Non-Agricultural Tenancy Act, user becomes a very important deciding factor.

Athar Ali V. Abdul Taher Bhuiyan 12 DLR 758.

S. 2 (4) & (5) : A non-agricultural lease in respect of both land with a building on it is outside the ambit of the Act.

The doctrine of frustration cannot apply to a lease in respect of immovable property as it creates an estate in such property.

Abdul Mutaleb V. Musammat Rezala Begum. (1970) 22 DLR (SC) 134.

S. 2 (4) and (5): Liability to pay rent for holding a specific land is the gist of the concept of tenancy as defined in the Act.

A person can be a co-sharer tenant, event if he is not a co-possessor (physically speaking) of the specified land, provided a co-tenancy is established in respect of the land itself.

Partition of a holding and mutual separate possession is not the same thing.

Brindaban Chandra Chowdhury V. Musamat Rezia Begum. (1964) 16 DLR 77.

S. 2 (4) and (5) : Legislature has made a distinction between non-agricultural land under the Non-Agricultural Tenancy Act and holding under the B. T. Act.

The words "non-agricultural land" means a piece of land in joint possession and enjoyment without partition which may form tenancy or a portion of a tenancy. This interpretation will not throw the land open to the unlimited number of persons but to persons who are co-sharers tenants under the same landlord in respect of undivided land though such co-sharers tenants may be co-sharers tenants of the tenancy with other co-sharer tenants of the tenancy.

Brindaban Chandra Chowdhury V. Musammat Rezia Begum. (1964) 16 DLR 77.

Ss. 2(4), 85 (2) : Right of pre-emption comes within the protection afforded by the proviso to sub-section 85 (2),

The crux of the question whether a tenant is entitled to pre-empt is the undivided character of the tenancy. The word "land" in section 24 of the Non-Agricultural Tenancy Act has been used in the same sense as "holding" has been used in section 26F of the Bengal Tenancy Act. Ibid

S. 2 (5). Meaning of sub-s. (5) of s.2 explained—A tenant occupying a structure as a tenant belonging to the owner is not a person to whom s.2 (5) applies.

Section 2 (5) of the Non-Agricultural Tenancy Act provides that non-agricultural tenant does not include any person who holds any land on which any premises oocupied by such person are situated, if such premises have been created or are owned by the person to whom such occupation is liable to pay rent for such occupation.

Md. Tabibur Rahman Mollah Vs. Md. Sayedur Rahman. (1984) 36 *DLR(AD)*48.

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S. 2(5): The expression "holds" in sub-section (5) of section 2 of the Act should be interpreted in its plain meaning as strict interpretation would create difficulties, Khagendra Nath Saha Vs. Naresh Chandra Roy (1952) 4 DLR 598.

—One G possessed the land in suit by virtue of a temporary oral lease under the plaintiffs. G. died in 1935, since when the defendants, his heirs, were in possession of the suit land but they were not recognised as tenants by the plaintiff who brought a suit for ejectment in 1943. The defendants claim that they 'were tenants' within the definition of the term in the Act of 23 of 1949 and that the Act was retrospective in operation and hence the suit could not succeed.

Held : After the death of G in 1935, the defendants were mere trespasser's and that the Act has no applicability to their case. (b). Ibid

—Monthly tenant—Entitled to rights given to tenant under the Act. A monthly tenant is included in the definition of a non-agricultural tenant and is entitled the rights given under this Act to a non-agricultural tenant. A. F. M. Kutubudowla V. Muhammad Sadeq PLD 1959 SC (Pak) 44=11 DLR 401.

S. 2(5) : A pucca building consisting of 3 rooms and the land on which the building stood and also the open space lying to the west of the building were let out and the demised leasehold is described as consisting of "Niskar lands, etc., and the pucca building" for a term of two years with the option of one renewal. The lessee failed to exercise the option of renewal and continued to hold the tenancy as monthly tenants. The plaintiffs determined the tenancy by 15 days' notice to quit after the expiry of the last day of the month and filed a suit for ejectment.

The East Bengal Non-Agricultural Tenancy Act came into force during the pendency of the appeal.

Held : It is not only competent for a court of appeal to take notice of such event as the enactment of the East Bengal Non-Agricultural Tenancy Act which came into force during the pendency of the appeal but it is its duty to do so. Faizur Rahman V. Jogendra Das (1951) 3 DLR 115.

Ss. 2(5), 7(4), (89), 90 : Protective provision of the Act as against eviction when can (or cannot) be invoked—12 years possession under this Act explained —Possession after the suit cannot be counted—date of commencement of the Act is the date of the commencement of the suit.

Definition of non-agricultural tenant was introduced for the first time in the Act (XXIII of 1949) giving the tenant's right in the land to his successor-in-interest and since it was not in the Act IX of 1940 where the definition of tenant only refers to the tenant and not his heirs and the Act of 1949 not being in force at the time when T. died. Therefore, the defendant cannot be treated as successor-in interest within the definition of non-agricultural tenant under Act XXIII of 1949.

After the death of T in 1942, the defendant continued to be in possession of the disputed non-agricultural land ; but that does not protect him as he has

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not possessed it as tenant nor completed 12 years before the institution of the suit, nor can he take the possession of his father to his possession for completing 12 years.

They possess the land during the pendency of this suit up to this stage but the period of his possession after the institution of this suit cannot be taken into consideration as nowhere the East Bengal Non-Agricultural Tenancy Act of 1949 provides that even if such a tenant did not complete 12 years possession before the institution of the suit but completed 12 years possession during the pendency of the suit, appeal or execution proceeding pending at the time of commencement of the Act, he can count upon that period of his possession or any portion thereof after the suit in calculating 12 years. The material point of time for computation of the period of 12 years is the date of institution of the suit as has been held in the case reported in 9 DLR 159, that as a rule, the date of commencement of Act, shall be taken to be the date of institution of the suit as if the Act was in force at that time.

Therefore, the defendant's possession after the institution of this suit is immaterial for the purpose of protection under the Act of 1949.

Delbar Vs. Sarada Sundari Debiy, (1961) 13 DLR 334.

—S. 2. The section on the face of it is not exhaustive. Sub-section (8) incorporates into this Act the definition of terms not defined here but defined either in the Bengal Tenancy Act VIII of 1885 or in the Transfer of Property Act IV of 1882.

The result of such incorporation is that even is the Act it incorporated, is repealed,—the repealed Act survives in its offspring the new Act, (Secretary of State V. Hindustan Corporation, 35 CWN 794 at p. 802. So any amendment or repeal of the definitions or of the whole of Bengal Tenancy and the Transfer of Property Acts will not affect the present Act.

Words defined in the B. T. Act not defined here so far as they may be necessary for the interpretation of this Act are section 3 (4) estate, (5) holding, (7) pay, payable, payment. (8) permanent settlement, (9) permanent tenure, (11) proprietor, (12) registered, (13) rent, (14) Revenue Officer. (15) signed. (16) succession, (18) tenure, Sec. 5 (1) tenure-holder, 5 (2) raiyat, Sec. 4(3) under-raiyat, ; Sec. 19 occupancy-raiyat ; Sec. 20 settled raiyat.

Words defined in the Transfer of Property Act and not defined here are—

Section 3 immoveable property, instrument, attested, registered, attached to the earth, notice, Sec. 5 transfer of property, living person, Sec. 54 sales, Sec. 58 mortgage, Sec. 105 lease, rent, Sec. 123. gift.

The definitions given in this Act of the words, 'landlord,' non-agricultural land and 'non-agricultural tenant' in clauses (3), (4) and (5) are to be read together ; they are dependent on each other.

—By the definition of non-agricultural tenant all tenancies in which the tenant holds not only lands but also premises erected or owned by the landlord are excluded from the operation of the Act.

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Landlord—includes the Government, but read with Section 85 of the Act all lands acquired under the Land Acquisition Act, 1894 for the Government and held by the Revenue authorities on behalf of any Department, are excluded from the scope of the Act.

The term 'Revenue authorities' has not been defined in this Act. An important class of tenants—those holding canal surplus lands, seems to be excluded as these are acquired lands held by Revenue authorities on behalf of the Canals and Irrigation Department. But lands acquired before 1894, or not acquired being khas mahal property would not be excluded. The Government is specifically mentioned because without such mention the Government will not be subject to the operation of this Act, Governor General of India V. Corporation of Calcutta, 52 CWN 173 ; Province of Bombay V. Municipal Corporation of the city of Bombay, 51 CWN 317 ; Corporation of Calcutta V. Sub-postmaster, Dhurramtolla, 54 CWN 429 at p. 433).

The Khas Mohals, the Panchannagram holdings beyond the limits of Calcutta, will be subject to the operation of the Act.

The word landlord being defined in relation to a non-agricultural tenant, an assignee of rents only but not of the landlord's interest in the land will not be a landlord nor will such a person be entitled to execute a decree for rent under Chap. XI of the Act even if he be an assignee thereof, Manurattannath Das V. Harinath Das, 1 CLJ 500, Akil Kanta Lahiri V. Aswini Kanto Bhattacharjee, 40 CWN 589, Rent has been defined in sec. 2(13) of the Bengal Tenancy Act.

S. 105 rent is defined to be money. share of crops, service or any other thing of value to be rendered periodically or on specified occasions. An assignee of rents only will not however be a landlord as the non-agricultural tenant will not be holding under him.

Chap. VII will not apply to suits by such assignee. Such suits will however be rent suits for the purpose of jurisdiction of courts on the analogy of the Full Bench case, Srish Chandra V. Nasim Quazi, 27, Cal. 827. The decree in such a suit will be a money decree, and sale will be a sale in execution of a money decree, (Krishnapada V. Manada Sundari, 59 Cal 1202 ; 36 CWN 518).

See however Bijanbala V. Mathur, 35 CWN 51 and Gopendra V. Ram Kishore, 37 CWN 901 where it was been held that the assignee of rent decree cannot execute it either as a rent decree or as a money decree.

For the position of a landlord losing interest before institution of a suit, see Forbes V. Maharaj Bahadur, 18 CWN 747 P.C. It was held that it could be executed as a rent decree (Chutterpal Singh V. Gopalsing Bothra, 4 CWN 446). This view must be taken as overruled by the Privy Council case. Loss of interest after decree but before applying for execution—decree can't be executed

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as rent decree, (Hemchandra V. Monmohini, 3 CWN 604). Loss of interest after applying for execution—decree may be executed as a rent decree, (Syedunnissa V. Amiruddin 21 CWN 847).

These decisions turned on the language used in sec. 148 (h) now sec. 148 (o) of the B. T. Act. The language used in Sec. 74 of the present Act which corresponds to Sec. 148 (o) of the B. T. Act is exactly the same.

Bengal year—is here defined with reference to its termination. In the Bengal Tenancy Act VIII of 1885—Agricultural year has been defined as the Bengal year commencing on the 1st day of Baisakh. Bengali year as here defined is the same as the Agricultural year of the B. T. Act.

Collector—The primary meaning is the Collector of a District. See definition in B. T. Act.

Non-agricultural land—the definition is a negative one and is made dependent on user. So far as this Act is concerned, an unauthorised user will not be held to be such user. See definition of tenant in Sec. 3 and Sec. 72. But in many cases the original contract will not be available, in such cases a long course of user will be held to give an indication of the purpose of the tenancy, (Hedayet Ali V. Kamalanand Singh, 17 DLJ 411). We have first to find out what are agricultural and horticultural purposes. As has been held 'Agricultural' is a term wider than cultivation, and cases have come to court for decision whether a particular purpose fell within the classification 'Agricultural'.

Grazing of cattle employed in cultivation has been held to be agricultural purpose, but not where the cattle are not raised for agriculture but for other purposes, (Brojobasi V. Ramsankar, 23 CLJ 638). The burden is on the landlord to show that grazing is unconnected with agricultural purposes, (Shyamsundar V. L. Ivans. 37 CWN 1009 at p. 1012). See also Fitzpatrick V, Wallace, 11 W. R. 231 and Latifar V. Farbes. 14 CWN 372 at p. 376. (Sonkholq has been held to be agricultural land, (Raja Kritibash Bhutati Hari Chandan V. Secretary of State for India, 15 CWN 300). Stacking agricultural produce or manure, threshing corn, are agricultural purposes, (Dinanath v. Sashi Mohan, 20 CWN 550). Lease of tank and banks has in some cases been held to be agricultural, (Surendra V. Chandralara, 34 CWN 1063)

For meaning of particular see 17 CLJ 411 supra, Land includes water, (Jagabandhu V. Bhowani. 9 Pat. 401 ; AIR 1929 Pat. 382).

The present Act excludes fishery rights from its scope. Sec. 5(c)(ii).

But land covered with water may be held for purposes other than fishery. The tenancy then will be within the scope of the present Act.

Non-agricultural tenant—is tenant of non-agricultural land, definition of which is given but an important class is excluded viz. those who occupy not only bare land but also structures on the land erected or owned by the landlord. This latter class of tenants comes within the purview of the West Bengal Rent Control Act. 'Tenant' has been separately defined in sec. 3. The

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additional requisites therein imposed are (a) holding under a proprietor or tenure-holder, and (b) holding for any of the purposes provided in this Act. For being a tenant there must be a liability to pay rent which may be excluded by a special contract.

Act IX of 1940 defined "non-agricultural tenant" as follows :—"non-agricultural tenant' means a tenant who holds under another person, and is liable to pay rent to such person for, non-agricultural land which, under the terms of any agreement, such tenant is entitled to use for homestead or residential purpose or for the conduct thereon of any commercial or industrial enterprise or any trade or business, and includes a tenant who holds agricultural land within any municipal area, but does not include a tenant who holds non-agricultural land together with any structure thereon erected or owned by the person under whom such tenant holds or by the superior or predecessor in interest of such person." (Vide Sec. Cl. (2). Act IX of 1940).

In the definition of Act 9 of 1940 the purpose of the holding homestead or residential purpose, or for the conduct of any commercial or industrial enterprise, or for any trade or business, was mentioned under section 4(c) of this Act, the non-agricultural tenant holding for other purposes, with the exception of purposes mentioned in section 5(c), clause (ii), that is, exercise of forest rights, right over fisheries, or rights to minerals, are included. The scope of the present Act is thus wider than that of Act IX of 1940.

In the definition of Act IX of 1940 as also in the present definition, if a person holds together with structures under another, would not be a non-agticultural tenant. The word "structures" of the Act IX of 1940, has been substituted by the word "premises" in this Act.

Decisions under the old Act IX of 1940.

Who are tenants included within the definition :—

An ex-tenants is included, (Baidya Nath Ghosh V. Bajrangilal, 53 CWN 783). Person having right to sell fruits from tress, and fish from tank, held not to be non-agricultural tenant, (Bhagabat V. Nagendra, 45 CWN 382). Sub-tenants holding tenancies of rooms, held not to be non agricultural tenants. (Jahur Mia V. Abdul Guffur, 45 CWN 603). A tenant of land and structures, who himself erects a shed held not to be a non-agricultural tenant, (Ajit Kumar V. Anukul Chandra, 45 CWN 678). To be given relief a claim by the tenant is not enough. He must establish that he is a non-agricultural tenant, (Baldeo Singh V. Upendra 45 CWN 780). A suit for ejectment of a trespasser could not be stayed under Act IX of 1940, unless the Court found that the defendant was a non-agricultural tenant, (Provabati V. Pratap Chandra. 45 CWN 991), Ejectment suit against sub-tenant after service of notice under section 167 B.T. Act, could not be stayed, *Ibid.*

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Sub-tenants becoming direct tenants by reason of surrender of the superior interest, held protected by the Act, (Reliance, Jute Mills V. Dukhi Shah, 46 CWN 889).

Tenant continuing after compromise, whereby the huts become the landlord's property according to the decree, is not thereafter a non-agricultural tenant entitled to protection, (Hemchandra V. Brindaban, 59 CWN 684).

Prescribed---means by Rules. For Rules framed under this Act, Sec. 92, see Calcutta Gazette Pt, I. pp.2109-20, Notification No. 10082 L. Ref : dated 23 Nov. 1949 Vide Appendix 1.

Pucca structure :---All that is required is that structure should be constructed not entirely but mainly of brick, stone or concrete or a combination of these meterials. In Bengal in ordinary parlance no structure is called pucca unless it has a pucca roof. The Act has deliberately departed from the ordinary meaning, thus giving valuable rights to tenants whom their landlords allowed to erect brick-built structures minus the roof with the idea that in such cases the tenants would not be able to set up permanent rights. See the provisions of Secs. 6 and 7.

There are cases as to substantial structures. See Casperz V. Kedarnath, 5 CWN 858 ; Gangadhar V. Aymuddin, 8 Cal. 960 and permanent dwelling houses under Sec. 37 Act XI of 1959, (Manmohan V. Turner Morrison & Co. 33 CWN 930 on appeal 36 CWN 29 P.C. Makar Ali V. Shyamacharan, 3 CWN 212).

Query---If a pucca ghat would be a pucca structure ?

Pucca structure : It seems that the erection of a pucca privy in a Municipal area by a tenant would not meet the requirements of sections 6,7,8 and 9 as a property let for residential purposes must have privy and the privy should conform to the health regulations---we cannot conceive of a kutcha privy existing in a Municipality, (Abdul Hakim V. Elahi Bux, 29 CWN 138).

As to what is rent :—See B.T. Act, s. 2(13), and T. P. Act, s. 105. In addition to a sum of money periodically payable the following have also been held to be rent. (a) Service, (Panchu V. Nagendra, 12 CLJ 480) ; (b) Share of Govt. Revenue Payable to landlord, (Dwarka V. Dambarudha, 38 Cal. 278; 15 CWN 266); (c) Cesses, (Govinda V. Lalil, 22 CLJ 571 ; Watson V. Smiller, 21 Cal. 132); (d) Share of produce, (Shama V. Rajani 1 CWN 55); (e) Wood, Nagenbala V. Sridam, 59 Cal. 513).

There are many non-agricultural tenancies in Bengal which were given for rendering service. Sec. 181, Bengal Tenancy Act preserved the contractual rights in the said tenures, and their non-transferability.

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The definitions of the Transfer of Property Act are made applicable by sec. 2 and the provisions of the T. P. Act in so far as they are not inconsistent with this Act apply. Under Sec. residential tenancies held on condition of performing service seem to be within the purview of this Act and would become transferable and bequeathable under sections 7, 8, and 9 in spite of sec. 181 of the B. T. Act and in spite of the original contract.

On refusal to perform service, or on the service being no longer required these tenures were resumable. See Radhaprasad V. Budhu. 22 Cal. 938 at p. 941 ; Prokash V. Rajendra, 35 CWN 581.

The only cases which will be beyond the scope of this Act will be grants of office remunerated by lands, as opposed to grant of land with condition of rendering service. See Lakhan Gounda V. Baswanta 35 CWN 721 F.C.

Service tenants under industrial concerns are however ejectable on termination of service See Sec. 69 of the Act.

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CHAPTER II

Classes af non-agricultural tenants.

3. CLASSES OF NON-AGRICULURAL TENANTS.—(1) There shall be, for the purposes of this Act, the following classes of non-agricultural tenants, namely :—

(a) tenants, and

(b) under-tenants.

(2) "Tenant" means a person who has aquired from a proprietor or a tenure-holder a right to hold non-agricultural land for any of the purposes provided in this Act, and includes also the successors-in-interest of persons who have acquired such a right.

(3) "Under-tenant" means a person who has acquired a right to hold non-agricultural land for any of the purposes provided in this Act either immediately or under a tenant and includes also the successors-in-interest of persons who have acquired such a right.

S. 3 : The date for the purpose of adjudication—12 years' rule.

The date should be taken for the purpose of adjudication will be the date of the institution of the suit. If 12 years are not completed from the date on which the suit was instituted, the tenant is not entitled to protection against eviction available to a person with 12 years' possession under section 7 of the Act.

As a rule, the date of the commencement of the Act shall be taken to be the date of the institution of the suit as if the Act was in force at that time. So, in the absence of any express provisions in the statute to the contrary a Court should never deviate from this principle. (1957) 9 DLR 159.

S. 3(2) : Ex-tenant not included within the term tenant.

--The word 'tenant, in section 3(2) of Act XXIII of 1949 does not include ex-tenants. An ex-tenant is not entitled to the benefit of section 106 of the Transfer of Property Act and, therefore, cannot claim that a suit for his ejectment will not lie unless notice as provided in section 106 of the Transfer of Property Act has been served on him. (1958) 10 DLR 472.

As the word 'person' includes under the General Clauses Act a body corporate and an association, a limited liability company or a partnership may be a tenant on the analogy of Thakur V. Atkins, 53 IC 206.

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An idol is a juridicial person capable of holding property, (Pradumna V. Promotha, 27 CWN 684). A mosque, however, is not a person who can sue or be sued, as to whether it can hold property—not decided. As it is not a person it seems that it cannot hold property, (Masjid Sahibganj V. Siromani Gurudwara, 44 CWN 957 P.C.)

"Successors-in-interest"—Successor means one to whom property descends ; in includes an heir as well as a transferee, (Deputy Commissioner Hardoi V. Manager Court of Wards. 60 IC 641).

Adverse possession :—a person may acquire the limited interest of a tenant by adverse possession, Jabeda Khatun V. Mazahar Ali, 30 CWN. 807.

In such a case the person aquiring by adverse possession would also be a successor-in-interest.

4. PURPOSES FOR WHICH NON-AGRICULTURAL TENANT MAY HOLD NON--AGRICULTURAL LAND.—**A non-agricultural tenant may hold non-agricultural land for—**

(a) **homestead or residential purposes ;**

(b) **manufacturing or business purposes ; or**

(c) **religious or other purposes.**

"homestead"—includes gardens, tanks and land necessary for enjoyment as homestead, (Kshirode Chandra Ghoshal V. Sarada Prosad Mitra, 12 CLJ 525; Sujit Kumar V. Iswar Chandra, 51 CWN 411). The word "homestead" has been defined in clause (14) of s. 2 of the E. B. State Acquisition and Tenancy Act cases under sec. 44 T. P. Act and section 3, Partition.

"Residential purpose"—Residence of a human being is where he eats, drinks and sleeps and where there is permanancy or continuation of such eating, drinking etc. Cal, Stock Exch. Association 39 CWN 327.

A person may have more than one residence e.g, where there is a house kept furnished and ready for occupation though the owner comes only for a short time during the year. Maharaja of Hathwa V. Beal 30 CWN 65 : 71 A 195.

Legal entities and Corporation cannot be said to reside at any place—R.J. Wyllie V. Secretary of State AIR 1930 Lahore 818.

—Ss. 4-5

Business—In the widest sense it means anything that requires care and attention—that which business. Ordinarily it means trading for gain (Commissioner of Income Tax Madras V. Dewan Bahadur S. L. Mathews 43 CWN 225 PC at p. 235). An adventure or concern in the nature of a trade, (Calcutta Turf Club V. Secretary of State 48 Cal. 844: AIR 1921 Cal. 44. The Government cannot be said to carry on a business in running a Railway. (Dominion of India V. Gopal Chandra Tapadar 55 CWN 113 at p. 115).

Other purposes:—Purposes other than agriculture and horticulture, excluded by definition S. 2(4) ; residence by S. 3(a) ; Manufacture and business by S. 3(b) ; exercise of rights over fisheries or forest rights or rights to minerals, by S. 5(c) (ii)—and cultivation of or manufacture of tea in the Districts of Darjeeling and Jalpaiguri by S. 2(4)(c).

5. TENANCIES HELD BY A NON-AGRICULTURAL TENANT.—A non-agricultural tenant shall be deemed to hold any non-agricultural land—

(a) for homstead or residential purposes if such tenant is entitled, under the terms of any agreement between himself and the landlord to use or is actually using such land for homestead or residential purposes ;

(b) for manufacturing or business purposes if such tenant is entitled, under the terms of any agreement between himself and landlord, to use or is actually using such land for carrying on therein any commercial or industrial enterprise or any trade or business ; and

(c) for religious or other purposes if such tenant is entitled, under the terms of any agreement between himself and landlord, to use or is actually using such land for a religious purpose or for any purpose not connected with agriculture or horticulture other than—

(i) the purposes specified in clauses (a) and (b), and

(ii) the exercise of any forest-rights or rights over fisheries or rights to minerals in such land.

The clause referring to actual user seems to be applicable only to cases where neither party can prove the original purpose of the tenancy.

—S. 5

Hedayet V. Kamalanand, 17 CLJ 411. Agreement need not be in writing. For definition of Agreement, see Contract Act, Sec. 2. Two elements are necessary, offer and acceptance. Consideration is not necessary. Saroj Bandhu V. Jananad Sundari, 36 CWN 555. Forest right, fishery right, right to minerals usually do not imply any right to the soil ; there may be a limited right to use the soil for the exercise of the right granted, (Gour Mohan V. Chandi Charan, 5 IC 158).

A right to grow trees as distinct from a right to or interest in land is a forest right. A right to grow trees for timber by undertaking a regular course of cultivation is agriculture, Commissioner Agricultural I. Tax V. Raja Jagadish, 53 CWN 596 ; Bande Ali Fakir V. Amud Sarkar, 19 CWN 415 ; Sarajubala V. Sarada Nath, 23 CWN 336.

Fishery right—Right to catch fish in a tank, river, or beel or other water without grant of a right or interest in land, (Abdullah V. Ashafali 7 CLJ 152 ; Krishnala V. Salim, 19 CWN 514 ; Brojobasi V. Ram Sankar 23 CLJ 638 ; Surendra Kumar V. Chandra Tara, 34 CWN 1063). In such cases right of user of the land of repairing embankments for fishery purposes is implied, (Nanilal V. Priyanath. 56 Cal. 1170 50; CLJ 19 ; The King Emperor V. Raja Probhat Nath Barua 31 CWN 765 F.B.).

Minerals—A permanent heritable lease by itself passes no right to minerals, Rajkumar Thakur Girishari Sing V. Meghlal Pandey, 22 CWN 201 PC ; Raja Bejoy Singh Dhuduria V. Surendranarayan Singh 33 CWN 7 PC, Jaytiprasad Singh Deo V. H. V. Law 34 CWN 347. There may be a grant of surface right to A and of minerals to B Satyaniranjan Chakraverty V. Ramlal Kaviraj 29 CWN 725 PC, Stones and gravel are minerals Raja Bhupindranarayan V. Rajeswar Prosad 35 CWN 870 PC. A lease of mines is not a lease in the real sense of the term, Felakrishna Pal V. Jagannath Marwari 36 CWN 709.

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CHAPTER III.

Tenants

6. MANNER OF USE OF NON-AGRICULTURAL LANDS.—(1) A tenant holding non-agricultural land may use such land in any manner which is not inconsistent with any of the purposes for which non-agricultural land may be held under this Act and which does not materially impair the value of such land.

(2) A tenant holding non-agricultural land comprised in any tenancy to which the provisions of section 7 or section 8 apply shall be entitled—

(a) to erect any structure including any pucca structure ;

(b) to erect a mosque, a temple or any other place of worship ;

(c) to dig any tank ; and

(d) to plant, enjoy the flowers. fruits and other products of, and fell [and utilize or dispose of the timber of, any tree on such land.

(3) A tenant holding non-agricultural land comprised in any tenancy to which the provisions of section 9 apply shall be entitled—

(a) to erect any structure other than a pucca structure ;

(b) to plant, and enjoy the flowers, fruits and other products of any tree, and

(c) to fell, and utilise or dispose of the timber of, any tree planted by him on such land.

Sec. 6(1) corresponds to Sec. 23 B. T. Act. Law before the B. T. Act restricted the user by the tenant to the purpose of the tenancy. As was said in Lal Sahoo V. Deonarain 3 Cal. 781 at p. 784. The statutory right of occupancy cannot be extended so as to make it include complete dominion over the land subject only to the payment of a rent.....The landlord is still entitled to insist that the land shall be used for the purposes for which it was granted.

—Ss. 6-7

There was the other view that the landlord was not entitled to complain unless he was injuriously affected (Nyamatulla V. Gobinda Charan Dutt, W. R. Act rulings 40).

But an user which completely changed the character of the land was never permitted. Lal Sahoo V. Deonarain 3 Cal. 781.

"not inconsistent with"—The user may not have been expressly sanctioned. It is sufficient if the user does not make land unfit for purposes of tenancy.

The land-lord however will be entitled to injunction on the ground of inconsistent user, if it renders the land unfit for the purpose of the tenancy, (Surendranarayan Singh. V. Harimohan Misra, 31 Cal. 174. on appeal to the Privy Council 34 Cal. 718: 11 CWN 794) —the judgment of the High Court was reversed on the ground that withdrawal of a small portion of a large holding from cultivation, and building factory thereupon did not render the whole holding unfit. See also Dhirendra Kumar V. Radha Charan, 57 I. C. 758; Sirish Chandra Ganguly V. Easom Musally, 38 CWN 93; AIR 1940 M. 32. S. 6(2)(c) corresponds to S. 23-A, B T. Act. S. 6(2)(a) and (b)—building of a pucca dwelling house and digging of a tank would be improvements under Sec. 70, B. T. Act.

User inconsistent with the purpose of the tenancy cannot be complained of unless is materially impairs the value of land. The word "and" is used to imply that both inconsistent use, and material deterioration of value, must be proved to entitle a landlord to relief against his tenant—relief being ejectment. Vide Secs. 7, 8 and 9

S. 6(2) not retrospective—If a tenant has "before commencement of this Act" done something which he has no right to do under the T. P. Act the remedy of the landlord does not seem to have been taken away, 46 CWN 623. Legislation is ordinarily prospective and not retrospective unless there are words which indicate the intention of the Legislature that the Act was meant to be retrospective, (Mataprasad V. Nageswar Sahai 30 CWN 626 P. C.; Amarnath Misra V. Sreenarayan Mansingka 54 CWN 617 at p. 620).

Building a mosque, (Srish Chandra Ganguly V. Essom Musally 38 CWN 93), and establishing a cremation ground (57 IC 758) were held to be misuse of agricultural lands. Establishment of a market was held to be a misuse (Raj Kishore V. Rajani Kanta, 24 CLJ 185), though temporary, it entitled the landlord to relief.

7. INCIDENTS OF CERTAIN TENANCIES.—**Notwithstanding anything contained in any other law for the time being in force or in any contract—**

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S 7, 8 & 9 ನ್ನ Difference

—S. 7

(1) if any non-agricultural land has been held with or without any lease having been entered into by the landlord and the tenant from before the commencement of the Transfer of Property Act. 1882, (IV of 1882) or if the origin of any tenancy is unknown, or

(2) if the non-agricultural land comprised in any tenancy which has been or is created after the commencement of the Transfer of Property Act, 1882, (IV of 1882), has been held for a period of not less than twelve years without any lease in writing, or

(3) if any non-agricultural land has been held under a lease in writing for a period of not less than twelve years but no term is specified in such lease, or

(4) if any non-agricultural land held under a lease in writing for a period specified therein continues to be held after the expiration of the time limited by such lease and the total period for which such land is so held is not less than twelve years, or

(5) if the landlord has allowed pucca structures to be erected on any non-agricultural land held under a lease in writing for a period specified therein, whether such structures have been erected—

(a) before the expiration of the said period, or

(b) where such non-agricultural land continues to be held with the express or implied consent of the landlord after the expiration of the said period during the period such non-agricultural land so continues to he held,

then—

(i) the tenant holding the non-agricultural land comprised in such tenancy shall not be ejected by his landlord from such land except on the ground that he has used such land in a manner which renders it unfit for use for any of the purposes specified in section 4;

—S. 7

(ii) [1][subject to the provisions of section 91 of the East Bengal State Acquisition and Tenancy Act, 1950, (E.B. Act XXVIII of 1951], the interest of the tenant in the non-agricultural land comprised in such tenancy shall, in the case where such tenant dies intestate in respect of such interest, be transmitted by inheritance in the same manner as his other immovable property :

Provided that in any case in which under the law of inheritance to which such tenant is subject, his other property goes to the State, his interest in such land shall be extinguished, and

(iii) the non-agricultural land comprised in such tenancy or a share or a portion thereof together with the interest of the tenant therein shall subject to the provisions of this Act [2][and of section 90 of the East Bangal State Acquisition and Tenancy Act, 1950) (E.B. Act XXVIII of 1951)] be capable of being transferred and bequeathed in the same manner, and to the same extent as his other immovable property.

S. 7. Occupation of a premises for 12 years—Section 7 not attracted.

Continuous occupation of the premises for over 12 years by the tenant did not bring him within the category of "non-agricultural tenants" and as such the protection under section 7 is not available to him.

Md. Tabibur Rahman Vs. Md. Sayedur Rahman (1984) 36 *DLR* (*AD*) 48.

Ss. 7, 88, 89 : Period of twelve years—How should be counted.

Suit for eviction was instituted on 21-5-1946 before the statutory period of twelve years had been completed. It was contended in second appeal that as the tenant had continued in possession and more than 12 years had elapsed since the beginning of the tenancy, he was entitled to protection.

Held : The date that should be taken for the purpose of adjudication will be the date of the institution of the suit ; 12 years not having been completed on the 21st May, 1946, the date on which the suit was instituted, the tenant is not entitled to protection against eviction available to a person with 12 years, possession under Section 7 of the Act.

Krishna Ranjan v. Hem Chandra Das. (1957) 9 DLR 159 D. B.

S. 7(4) : Ejectment suit—when 12 years not complete.

The tenant sought protection under section 7(4) of the East Bengal Non-Agricultural Tenancy Act against an ejectment suit by the landlord. The tenancy

1. Subs. by E.P. Ord. IX of 1967.
2. Ins. by E.P. Ord. IX of 1967.

in question came into existence on 28-1-38 and the Act came into force on 20-10-49 that is 12 years were not complete between the date when the tenancy came into being and on 20-10-49 when Act XXIII of 1949 came into force.

Held : In view of the provision of section 89-A of the Act. the tenant not having completed 12 years between these two dates, he cannot resist the landlords suit for ejectment. Nihar Ranjan V. Nurannesa Chowdhurani (1958) 10 DLR 472.

—Successor in interest in possession of land, if and when can acquire tenancy right.

T, a non-agricultural tenant took settlement of the land in suit for residential purposes on 16-9-27 at a rental of Rs. 30/- per annum.

He died about the year 1942, leaving his son, the defendent in possession of the land. The landlord plaintiff instituted for ejectment of the defendant from the suit land on the ground that the latter was a trespasser. During the pendency of this suit the E. B. Non-Agricultural Tenancy Act, 1949 came into force and the defendant sought protection against his ejectment under provision of this Act.

Held : At the time when T. died he did not acquire any interest in the land of tenancy as contemplated in section 7(4) of the Act and therefore, his son the defendant does not acquire the rights which has been conferred by section 7(4).
Delbar V. Sarada Sundari Deby (1961) 13 DLR 334.

Such an Act is to be construed literally and strictly as it interferes with the freedom of contract (Bhupendra V. Debendra Nath, 46 CWN 368). "Notwithstanding etc. ... ...means that nothing in any other law or in any contract between the landlord and tenant shall be an impediment to the tenant getting the rights conferred by the section.

Origin unknown—A patta is not necessarily the commencement of a lease if it indicates that tenancy existed from before. A presumption of a lost grant is held to arise in cases of tenancies whose origin is unknown, (Baba Kumari V. Beharilal, 34 Cal. 902.) No presumption arises when origin is known, (Lala Baniram V. Kundanlal, 3 CWN 502 PC). Presumption was made in the following cases—Manohar Das V. Charu Chandra, 54 CWN 706 ; Goswamini Kamala Bapuji V. Collector of Bombay 41 CWN 1194 PC. ; Ray Kiranchandra Roy V. Srinath Chakravarty 31 CWN 135 ; Raja Sreenath V. Dinabandhu 18 CWN 1217 PC.

Non-agricultural land—Permanent tenure is a tenure not held for any limited term. Under the T.P. Act, a lease for a basha not for any fixed term. and without words of inheritance was held to be at least a lease for life, (Chandi Charan Mitra V. Ashutosh Lahiri 40 CWN 52 ; Md. Sadkatal Bari V. Moulvi Raziuddin 43 CWN 794 ; Luckraj V. Kanhaya 3 Cal. 210 PC.)

Bemeyadi—Tenancy without term held terminable at will, (Laksman Chandra V. Nasim Sardar 36 CWN 341).

—S. 7

The Privy Council in Raja Janakinath V. Dinanath Dundu 35 CWN 982 held that whether a bemeyadi lease would be permanent or terminable with notice would depend on the context.

—deals with cases when there was a term mentioned in the lease but the tenancy has continued with express or implied consent of landlord after expiry of the term, and the total period of occupation is more than 12 years.

In this connection see s. 116, T. P. Act and language used there, for express or implied consent the landlord must do something, e.g. accept rent, or do some act which shows that he acquiesces in the continuance of the tenant, (Chintalapati V. Gollavilli, AIR 1926 Mad 566 ; Trailakya V. Sarat Chandra, 32 Cal 132)

Note—erection of pucca structures was one of the elements in finding the permanency of a tenancy (Debendra Nath V. Pashupati Nath, 35 CWN 1047), where orlgin of the tenancy was unknown, (Probhas Chandra V. Debendra Nath, 43 CWN 828 ; Abdul Hakim V. Elahi Bux 29 CWN 138).

Questions may arise whether the unfitness is temporary or permanent. Temporary unfitness e.g., establishment of a market has been held sufficient to entitle landlord to ejectment, (Rajkishore Mandal V. Rajani Kanta. 24 CLJ 85).

Unfitness by itself will be no ground for ejectment. First of all a notice under sec. 75 must be given to enable the tenant to remedy the misuse. Secondly, there must be a decree for ejectment, sec. 70. Thirdly, the right to ejectment must be exercised in respect of the entire holding (Parbati Debi V. Taraknath, 46 CWN 786).

Limitation is Art. 32 of the Limitation Act. The landlord may wait for further acts when the first Act affects only a part of the holding. The period of the notice will be excluded under sec. 15, Limitation Act. (46 CWN. 786.)

Denial of landlord's title : Under the general law and under the T. P. Act denial of landlord's title entails forefeiture. This principle has been applied to Bengal Tenancy cases when the landlord has lost his suit on the ground of such denial Nilmadhab Bose V. Anantaram Bagdi 2 CWN 755 ; Faiz Dhali V. Afiabuddin 6 CWN 575 ; Halimulla V. Mohammad 32 CWN 391 ; Ekabbar Saikh V. Hara Bewa 15 CWN 335.

(ii) The language here used corresponds to sec. 26, B. T. Act. Prior to the T. P. Act non-agricultural tenancies were neither transferable nor heritable (Ashutosh Lahiri V. Chandi Charan Mitra 31 CWN 46 ; 46 CWN 52 ; Md. Sadkotul Bari V. Rajiuddin, 43 CWN 794).

If a tenancy before the T. P. Act has been freely transferred it was an index of the permanent character of the tenancy, (Sailendra Nath V. Bijanlal 49 CWN 133 at P. 138 ; Jogendra Krishna V. Subasini, 45 CWN 590 at p. 596),

—Ss. 7-8

After the Transfer or Property Act even monthly tenancies became heritable and transferable, (Md. Sadkatul V. Raziuddin, 43 CWN 794—at p. 797).

Proviso :—The law of Escheat was made expressly inapplicable by sec. 26, B. T. Act to agricultural rayati holdings. It continued to apply to T. P. Act tenancies. By the proviso of s. 7 (ii) non-agricultural tenancies coming under the Act have been excluded from the operation of the law of escheat, and in case of failure of heirs of a non-agricultural tenant instead of the Government the landlord benefits, in the sense that the tenancy ceases to exist. If there are any sub-tenancies, i. e., under-tenants under sec. 3—they will automatically become tenants under the landlord as the language is that his, viz., the tenant's interest only is extinguished. Any encumbrance or mortgage of the interest of a tenant will also cease to exist, because there would not exist any interest upon which the encumbrance can operate, Mukta Keshi V. Pulinbehari 8 CLJ 324 : 13 CWN 12. When however the heir of a tenant does not accept the inheritance he will not be liable to pay rent Maharaja Prodyot Kumar V. Hamidur Rahman 41 CWN 1154. It has been held that when one of several tenants dies without heirs his share in the tenancy reverts to the landlord, (Trailukyanath V. Ambika Charan 41 CWN 1148).

The similar provision in s. 26 B B. T. Act was held not to be retrospective, and the landlord is not bound to recognize a transferee of his tenant whom he was not bound to recognize before the Act came into operation (Annada Prosad V. Ramjan Sarkar 44 CWN 118).

This Act lays down the manner of transfer in sec. 23 as the B. T. Act does in sec. 26C. So a transfer of non-agricultural tenancy of the value of less than Rs. 100/- can not be made by simple delivery of possession. Sec. 54 T. P. Act will not apply.

8. RENEWALS OF LEASE OF TENANCIES HELD FOR NOT LESS THAN TWELVE YEARS AND SUCCESSION TO AND TRANSFTR OF SUCH TENANCIES. — **(1) Notwithstanding anything contained in any other law for the time being in force or in any contract, where any non-agricultural land is held under a lease in writing for a term of not less than twelve years specified in such lease, the tenant holding such land shall on the expiration of the period so specified be entitled to the renewal of such lease for perpetuity on such fair and reasonable rent as may be [1][determined under chapter XIV of the East Bengal State Acquisition and Tenancy Act, 1950. (E.B. Act No. XXVIII of 1951).**

1. Subs. for "agreed upon between the landlord and such tenant" by E.P. Ord. IX of 1967

—S. 8

Provided that no premium or salami shall be payable in respect of such renewal.

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(3) A tenant holding non-agricultural land comprised in a tenancy to which the provisions of sub-section (1) apply shall not be ejected by his landlord from such land during the term specified in the lease, nor at any time after the tenant has exercised his right of renewal, except on the ground that he has used such land in a manner which renders it unfit for use for any of the purposes specified in section 4.

(4) The interest of the tenant in any non-agricultural land held under a lease to which the provisions of sub-section (1) apply shall during the term specified in the lease, or where the tenant has exercised his right of renewal at any time thereafter—

(i) in the case where such tenant dies intestate in respect of such interest be, 2[subject to the provisions of section 91 of the East Bengal State Acquisition and Tenancy Act. 1950, (E.B. Act No. XXVIII of 1951)] transmitted] by inheritance in the same manner as his other immovable property :

Provided that in any case in which under the law of inheritance to which such tenant is subject his other property goes to the State his interest in such land shall be extinguished ; and

(ii) subject to the provisions of this Act 3[and of section 90 of the East Bengal State Acquisition and Tenancy Act, 1950 (E.B. Act No. XXVIII of 1951)] be capable of being transferred and bequeathed in the same manner and to the same extent as his other immovable property.

Successive renewals.—This is an innovation law. Even in leases with a covenant for renewal, there is only one renewal, all terms and conditions remain the same as in the old lease, (Banamali Das V. Kamalakanta 39 CWN 906; Lani Mia V. Md. Easin Mia 20 CWN 948). Period of the renewed lease is the same as

1. Omitted by E.P. Ord. IX of 1967.
2. Subs. for "be transmitted". Ibid.
3. Ins. by Ibid.

provided in the original lease (Nibaran Chandra V. Amar Chandra 37 CWN 618). Ordinarily an option of renewal is exercisable within a fixed time. This section does not lay down any period within which the option is to be exercised. When there is no fixed time for exercise of option and tenant continues after term, right of getting renewal is not lost, (Maharani Hemanta Kumari V. Sefatulla 37 CWN 9).

Nothing is said herein as to the method by which the option is to be exercised. Any act of the tenant which communicates to the landlord his intention to renew will be sufficient, (Maharaja Prodyot Kumar V. Maynuddin Mia, 68 CLJ 435 : AIR 1938 Cal. 724).

Salami or premium has been held to be capitalized rent and that is the reason why salami is forbidden when the court will fix a fair and equitable rent. See Maharaja Bir Bikram Kishore V. Province of Assam, 53 CWN 164 at pp. 178-9.

It would be a capital receipt if salami be taken for conversion of the soil, or for purchasing the right to enjoy benefit granted. (Raja Bahadur Kaniakhya Naran V. Commissioner of Income Tax, Bihar, 48 CWN 59 ; Gous Ali V. Afsaruddin, 53 CWN DR 55 at p. 57).

S. 8(2). "any dispute as to whether any condition". This seems to be a little inconsistent with s. 8(1) which only speaks of fair and reasonable conditions as to rent ; the other conditions can scarcely be the subject of any dispute, because in a case of renewal of a written lease the renewal is on the same terms and conditions. (Nibaran Chandra V. Amar Chandra, 37 CWN 618 Banamali Das V. Kamalakanta, 39 CWN 906). Covenant for renewal in a lease is not a covenant running with the land, but here liability to renew attaches by law to the ownership of land, (Secretary of State V. Volkart Brothers, 33 CWN 33 PC).

It that case the covenant to renew was held to be a covenant to create new rights. The same case is an authority for the proposition that a covenant for renewal cannot be enforced partially by a partial transferee, or by the original lessee as to the part retained by him. Note that sub-secs. (1) and (2) of sec. 8 speak of renewal of the lease, not renewal as to a part. The principle of the ruling reported in 33 CWN 33 FC (Secretary of State V. Volkart Brothers) seems to apply and preclude renewal as regards portions of a tenancy.

According to the language used in S. 8 (2) all conditions regarding the renewal of a lease seem to have been brought within the jurisdiction of the court. It is unlikely however that the Legislature wanted deliberately to go back upon the well-established principle that the courts will not make or reconstruct a contract between parties, (Comptois Commercial V. Powerson and Company,

—Ss. 8-9

1920 K. B. 868 at p. 899 quoted in Progdas Madadas V, Jewanlal 1929 Ltd., 53 CWN 226 FC at p. 229) For fixing a fair and reasonable rent see principles laid down in Sec. 11(2) of this Act and Secs, 30—35. B. T. Act.

In case of Mahomedans there is no right to make a will exceeding 1/3rd shares. (A. I Salayji V. Fatema Bibi, 28 CWN 31 PC. ; Sk. Anar Ali V. Sk. Omar Ali, 55 CWN 33). There is a right to make an oral gift but this seems to be affected by the provision of Sec. 23 of this Act. (Sreemati Jan V. Fuljan Khatun, AIR 1941 Cal. 266). A coparcener in a mitakshara family has no right before partition to transfer his share by gift or will, (Babu V. Timma. 7 Mad 357 ; Lakshman Dada Naik V. Ramchandra Dada Naik, 5 Bom. 48 PC). Nor can he transfer for value his undivided share without consent of other coparceners, unless for legal necessity, (Madho Prosad V. Mehrban Singh, 18 Cal. 15 PC). That disability will attach to transfer of non-agricultural tenancies.

A Hindu cannot by will make a bequest completely depriving his wife of maintenance and residence. If he does, estate is still liable for the maintenance and residence of the widow, (Debendra Kumar V. Brojendra Kumar, 17 Cal. 886 ; Jadunath Roy V. Parameswar, 44 CWN 233 PC).

9. INCIDENTS OF NON-AGRICULTURAL TENANCIES HELD FOR LESS THAN TWELVE YEARS.—(1) **Notwithstanding anything contained in any other law for the time being in force or in any contract, if any non-agricultural land has been held for a term of more than one year but less than twelve years.—**

(a) without a lease in writing, or

(b) under a lease in writing for a term of more than one year and less than twelve years to which the provisions of clause (5) of section 7 do not apply, or

(c) under a lease in writing but no term is specified in such lease.

then the tenant holding such non-agricultural land shall be liable to ejectment on one or more of the following grounds and not otherwise, namely:—

(i) on the ground that he has used such land in a manner which renders it unfit for use for any of the purposes specified in section 4 ;

—S. 9

(ii) on the ground that the term of the lease has expired in the case of tenancies of the class specified in clause (b),

(iii) on the ground that the tenancy has been terminated by the landlord by six months' notice in writing expiring with the end of a year of the tenancy served on the tenant in the prescribed manner in the case of tenancies of the class specified in clause (a) :

Provided that a tenant shall not be liable to ejectment on the ground specified in clause (iii) except on payment of such reasonable compensation on account of the cost of removal of any structure erected or of any improvement effected on such land at the expense of the tenant or on other accounts not being the value of the land as may be [1][determined by the Deputy Commissioner in the prescribed manner.]

(2) The interest of the tenant in any non-agricultural land to which the provisions of sub-section (1) apply shall—

(i) in the case where such tenant dies intestate in respect of such interest, [2][be subject to the provision of sec. 91 of the State Acquisition and Tenany Act, 1950 (Act No. XXVIII of 1951) transmitted] by inheritance in the same manner as his other immovable property :

Provided that in any case in which under the law of inheritance to which such tenant is subject his other property goes to the State, his interest in such land shall be extinguished ; and

(ii) subject to the provisions of this Act, [3][and of the provisions of section 90 the State Acquisition and Tenancy Act, 1950 (Act No. XXVIII of 1951)] be capable of being transferred and bequeathed in the same manner and to the same extent as his other immovable property.

S. 9(1)(iii) : Ejectment suit—15 days' notice.

Where a non-agricultural land is held by a non-agricultural tenant as a monthly tenant, the provisions of section 106 of the Transfer of Property Act will apply and the tenant will be entitled to 15 days' notice for the purposes of suit for ejectment. Bengal River Service Ltd. Vs. Murali Dhar Ray (1955) 7 DLR 525.

1. Subs. by E. P. Ord. IX of 1967
2. Subs. Ibid
3. Ins. Ibid

—S. 9

—6 months' notice.

—Ejectment suit against a monthly tenant holding land for more than one year but less than 12 years—Tenant entitled to 6 months' notice. Kutubudowla Vs. Md. Sadeq (1959) 11 DLR (SC) 401.

Clause—(a) "Lease in writing" See Sec. 107, T.P. Act. A lease to be opertive for a period of more than 1 year must be registered, therefore it must be in writing, (Ali Hossain V. Janab Ali. 62 CLJ 534) Lease for an indefinite period need not be registeret, (Umar Bux V. Baldeo Singh, 3. I.C. 35) Tenancy at will also need not be registered (Sarat Chandra V. Jadab Chandra 44 Cal. 214 : 21 CWN 206). According to Calcutta High Court an unregistered lease for more than 1 year is valid as a lease for the first year thereafter if rent be accepted it is a monthly tenancy terminable by notice to quit, (Adinath V. Krishna Chandra, 47 CWN 127). After amendment of the T.P. Act by the XX of 1929 where a lease has to be made by a registered instrument, it must be signed both by Lessor and Lessee. Th is amendment however is not retrospective in its operation' and applies only to leases subsequently executed, (Abdul Rashid V. Charu Kumar 43 CWN 936). "Clause (5) Sec. 7 does not apply;"—this excludes all leases where a pucca structure has been allowed. In those cases the tenant gets transferable and heritable rights and he cannot be ejected except for misuse of land ; no matter what is the length of his occuption.

Clause (b)—"without a lease in writing"—when there is a lease but it is inadmissible as contravening sec. 107., T.P. Act, and the tenant is in occupation it will be a case of holding without a lease in writing. See Adinath V. Krishna Chandra 47 CWN 127, Supra, A squatter is not a tenant unless he cultivates the land upon which he squats, Manindranath Dinda V. Panchanan Mandal, 55 CWN 171 194.

Clause (c)—"under a lease in writing but no term specified—"See Umar Bux V. Baldeo Singh, 32 I.C. 35, Supra. A bemeyadi lease would come within this clause. It is non-permanent, (Abinash Chandra V. Raj Kumar 43 CWN 356) B.T, Act). Whether it is permanent or terminable, depends on construction of lease where a meyadi (term) lease was substituted by a bemeyadi one (without a definite term) and Rs. 3500/- was paid as selami and there was provision against surrender, Privy Council held, it was a permanent lease, (Raja Janakinath V. Dinanath Kundu, 35 CWN 982). A bemeyadi lease, for a basha (residence) was held to be a lease for life of the grantee, (Ashutosh V. Chandi Charan, 31 CWN 46; Md. Sadkutul Bari V. Moulvi Raziuddin, 43 CWN 794).

Sub Cl. (i)—corresponds to Sec. 25, B.T. Act. See sections 7 and 8.

Sub Cl. (ii)—is the same as Sec. 111, T.P. Act, Clause (a). Position of a tenant holding over after expiry but without consent of landlord cannot be considered to be that of a tenant, (Ubedul Rahman V. Darbari Lal, 146 I.C. 845 ; 1933 Lah. 509).

—Ss. 9-10

Sub Cl. (iii)—Without payment of compensation there shall be no decree for ejectment. Messrs Durlav Chandra Ghosh V. Benarasi Debi Jalan, 56 CWN 495. "Reasonable"– this is the only qualifying word. This word has been used and interpreted in other cases. Golum Siddique V. Jogindra Nath. 43 CLJ 452; Rai Gudar Sahey. I CWN 537. As to what is reasonable, it will depend on the circustances of each case. Per Lord Romilley in Labouchere V Dacossen, 1872 13 Eq. cases 325.

9A. COMPUTATION OF THE PERIOD OF POSSESSION.—**In computing under this Chapter the period for which any non-agricultural land has been held by a tenant, he shall be entitled to tack to the length of his possession any periods during which his predecessors-in-interest were in possession of the land, provided that there is no break between the periods to be tacked.**

10. SPECIAL PROVISIONS APPLICABLE TO TENANCIES FOR SPECIFIC RELIGIOUS PURPOSES.—**Notwithstanding anything elsewhere contained in this Act or in any other law for the time being in force or in any contract, if the non-agricultural land comprised in any tenancy is held specifically for any religious purpose for any period under a lease in writing in which such purpose is specified, then such tenancy shall be deemed to be a tenancy of the class specified in section 7 :**

Provided that the tenant holding such land shall not be ejected by his landlord from such land except on the ground that he has used such land for any purpose other than the said religious purpose or has not used the land for the said religious purpose for more than three years.

Sec 10 : Under the Mohomedan Law a co-sharer or neighbour is entitled to pre-empt. (Enayetulla V. Kowoher Ali. 31 CWN 14 T B; Mahmad Wajed Ali V. Puran Singh 33 CWN 318 P C.) These rights however arise only on transfer and not on misuse of the land.

By the words "notwithstanding.....or any contract" the rights of pre-emption given by Mohamadan law or other laws are abrogated. A question may well arise whether on such transfer being made under Sec. 10 the purchaser will or will not be subject to a co-sharer's or neighbour's right of pre-emption. A forced sale however is not subject to pre-emption. See Sheobaran Sirg V. Mustt. Kulsamannessa, 31 CWN 853 PC.

[1] [* * * * * *]

CHAPTER IV

Under-tenant

16. APPLICATION OF CHAPTER – The provisions of this Chapter shall apply to all under-tenants whether their tenancies were created before or after the commencement of this Act.

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1. Secs. 11—15 omitted by E.P. Ord. IX of 1967. Omitted secs, ran as follows.

11. Enhancement of rent—(1) The rent payable by a tenant in respect of any non-agricultural land shall except in the case where such land is held on a fixed rent or free of rent either under a contract or under a decree or order passed by a competent Court or authority, be liable to enhancement as provided by this Act and not otherwise.

(2) The rent payable by a tenant may be enhanced up to such limit as the Court thinks fair and equitable in the circumstances of the case:

Provided that the rent shall not be enhanced so as to exceed the rent previously payable by the tenant by more than twelve and a half per centum.

(3) In determing a fair and equitable rent under sub-section (2) the Court shall subject to such futher provisions as may be prescribed in this behalf, take into consideration—

(a) the existing rent and the period during which it has remained without enhancement ;

(b) as far as can expediently be ascertained, the rent paid to other landlords for non-agricultural lands in the vicinity with similar advantages or of a similar description.

(c) the market value of the non-agricultural land determined by taking the average market value of five years preceding and the rent which would be payable if the rate were fixed at not more than two per centum of such market value ;

(d) the special conditions and incidents, if any, of the tenancy; and

(e) any cost incurred in making any improvement to or on the non-agricultural land or in converting such land for the purpose for which it is being used according to the conditions of the tenancy.

12. Provisions as to enhancement on ground of landlord's improvement.—(1) When an enhancement is claimed on the ground of landlord's improvement.—

—S. 16

Sec. 16—makes the provisions of this Chapter applicable to under-tenancies created before the passing of the Act ; thus giving the provisions herein contained retrospective effect. The language is similar to that of Sec. 47A B. T. Act Cf. Jodhon Prasad V. Haji Mahamad Eusuf, 42 CWN 992.

Note that non-agricultural under-raiyati tenancies created by a raiyat who is governed by the B. T. Act are governed not by this Act, but by the B. T. Act. See Baburam V. Mahendra, 8 CWN 454 ; Sadhannath V. Aghore Nath, 37 CWN 818.

(a) the Court shall not grant an enhancement unless the improvement has been registered in accordance with the provision of this Act, and

(b) in determining the amount of enhancement the Court shall have regard to,—

(i) the increase in the value of the non-agricultural land caused or likely to be caused by the improvement,

(ii) the cost of the improvement,

(iii) the expenditure (if any), required for ultilising the improvement, and

(iv) the existing rent and the ability of the non-agricultural land to bear a higher rent.

(2) A decree under this section shall on the application of the tenant, be subject to reconsideration in the event of the improvement not producing or ceasing to produce the estimated effect.

13. Powers to order progressive enhancement.—If it thinks that an immediate increase of rent will cause hardship the Court may direct that the enhancement shall take effect gradually at such intervals and by such increment extending over a period not exceeding five years as the Court may fix in this behalf.

14. Limitation of right to enhancement.—(1) When a tenant is admitted to the occupation of any non-agricultural land the rent payable by such tenant in respect of such land shall not, except on the ground of landlord's improvement, be enhanced during the fifteen years next following the date on which the tenant has been so admitted to the occupation of such land.

(2) When the rent of a tenant has been enhanced by the Court or in pursuance of the conditions of a contract, it shall not be further enhanced during the fifteen years next following the date on which it has been last so enhanced and for the purposes of this section if an order of gradual enhancement of such rent has been made by a Court in accordance with the provisions of section 13, the full rent fixed by such order shall be deemed to have come into effect from the date of such order :

—S. 20

1[* * * * * * *]

20. EJECTMENT OF AN UNDER-TENANT.—Notwithstanding any thing contained in any other law for the time being in force or in any contract, an under-tenant shall, subject to the provisions of this Act, be liable to ejectment on one or more of the following grounds, and not otherwise, namely :—

(a) on the ground that he has used the non-agricultural land comprised in his tenancy in a manner which renders it unfit for use for any of the purposes specified in section 4 ;

(b) on the ground that the term of his lease has expired when he holds the non-agricultural land under a written lease :

Provided that in the case where any non-agricultural land is held by an under-tenant without a lease in writing or under a

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Provided that the landlord of such tenant may institute a suit for the enhancement of the rent of such tenancy during the said period of fifteen years on the ground of any improvement effected to the non-agricultural land comprised in such tenancy by or wholly or partly at the expense of, such landlord during such period.

15. Reduction of rent.—The rent of a tenant may be reduced by the Court if the Court considers that the rate of rent payable by such tenant is unfair and inequitable, and in determining what rent is fair and equitable under this section the Court shall have regard to the provisions of sub-section (3) of section 11.

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1. Secs. 17—19 omitted by E.P, Ord. IX of 1967. The omitted sections ran as follows :

17. Terms on which an under-tenant may be admitted to occupation of non-agricultural land. An under-tenant may be admitted to the occupation of any non-agricultural land on such terms and conditions consistent with the provisions of this Act as may be agreed on between himself and his landlord.

18. Rate of rent payable by an under-tenant.—An under-tenant shall be liable to pay such rate of rent for the non-agricultural land comprised in his tenancy as has been agreed on between himself and his landlord at the time of his admission to the occupation of such land :

Provided that the rate of rent payable in respect of the non-agricultural land comprised in any tenancy by an under-tenant who has been admitted to occupation of such land after the commencement of this Act shall not, except in the

—Ss. 20-21

lease in writing but no term is specified in such lease, it shall be also lawful for his landlord to eject him from such land after having given him six months' notice in writing expiring with the end of a year of the tenancy, and on payment of such reasonable compensation as may be [1][determined by the Deputy Commissioner in the prescribed manner].

21. OTHER INCIDENTS OF TENANCIES OF UNDER TENANTS.—The interest of an under-tenant in any non-agricultural land shall,—

(a) in the case where such under-tenant dies intestate in respect of such interest, [2][be subject to the provisions of section 91 of the State Aquisition and Tenancy Act, 1950, (Act XXVIII of 1951) transmitted] by inheritance in the same manner as his other immovable property :

Provided that in any case in which under the law of inheritance to which such under-tenant is subject his other property goes to the State, his interest in such land shall be extinguished ; and

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case where such land is held on a fixed rent or free of rent by the tenant under whom such under-tenant holds, exceed one and a half times the rate of rent payable by such tenant in respect of such land.

19. Enhancement of rent.—(1) Notwithstanding anything contained in any other law for the time being in force or in any contract, the rent of an under-tenat shall be liable to enhancement up to a limit not exceeding one and a half times the rent for the time being payable in respect of the non-agricultural land comprised in the tenancy of such under-tenant by tenant under whom such under-tenant holds in the case where such tenant, does not hold such land at a fixed rent or free of rent and up to such limit as the Court may, subject to such provisions as may be prescribed in this behalf think fair and equitable in other cases.

(2) For the purposes of sub-section (1) the rent for the time being payable in respect of the non-agricultural land comprised in the tenancy of an under-tenant by the tenant under whom such under tenant holds shall, in the case where such under-tenant has been admitted to the occupation of only a portion of the land comprised in the tenancy of such tenant be determined in such manner as may be prescribed.

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1. Subs. by E. P. Ord. No. IX of 1967.
2. Subs. ibid.

—Ss. 21, 22

(b) subject to the provisions of this Act, [1][and of the provisions of sections 90 of the State Acquisition and Tenancy Act, 1950 Act No. XXVIII of 1951)] be capable of being transferred and bequeathed in the same manner and to the same extent as his other immovable property.

S. 21 : See similar provisions for under-raiyats in the B. T. Act in section 48F, where landlord's consent is required before an under-raiyat can transfer.

22. SPECIAL INCIDENTS OF A PERMANENT TENANCY OF AN UNDER-TENANT.—Notwithstanding anything contained in any other law for the time being in force or in any contract, where the conditions referred to in clauses (1), (2), (3), (4) or (5) of section 7 or section 10 are fulfilled in relation to the tenancy of an under-tenant or where any non-agricultural land is held by an under-tenant under a lease in writing for a term of not less than twelve years specified in such lease, such under-tenant shall have as regards his immediate landlord all the rights and liabilities of a tenant as set forth in section 7, section 8 or section 10, as the case may be, and the provisions of section 6 [2][* *] shall apply, and the provisions of section [3][* *] 20, in so far as they are inconsistent with provisions of this section shall not apply, to such under-tenant.

Sec. 22 makes section 10 applicable to under-tenants i.e. a co-sharer tenant or a landlord occupying adjacent land may purchase the under-tenant's interest in case of user as described in sec. 10.

1. Ins. by E.P. Ord. No. IX of 1967.
2. Subs. by E.P. Ord. IX of 1967.
3. Subs. Ibid.

CHAPTER V

Provisions as to transfer of non-agricultural land.

23. MANNER OF TRANSFER OF NON-AGRICULTURAL LAND AND NOTICES TO LANADLORDS.—(1) Every transfer of non-agricultural land held by a non-agricultural tenant or of any portion or share thereof shall, except in the case of a bequest or a sale in execution of a decree or a certificate signed under the Public Demands Recovery Act, 1913, (Act III of 1913) be made by registered instrument, and a Registering officer shall not accept for registration any such instrument unless the sale price or, where there is no sale price, value of the land or portion or share thereof transferred is stated therein and unless it is accompanied by—

(a) a notice giving the particulars of the transfer in the prescribed form, together with the process fee prescribed for the service thereof on the landlord who is not a party to the transfer, and

(b) such notices and process fees as may be required by sub-section (4)

(2) In the case of a bequest of such land or portion or share thereof, no Court shall grant probate or letters of administration until the applicant files a notice similar to, and deposits a process fee of the same amount, as, that referred to in clause (a) of sub-section (1).

(3) A Court or Revenue-officer shall not confirm the sale of such land or portion or share thereof put to sale in execution of a decree or a certificate signed under the Public Demands Recove ry Act, 1913 (Act III of 1913.) and no Court shall make a decree or order absolute for foreclosure of a mortgage of such land or portion or share thereof until the purchaser or the mortgagee, as the case may be, files a notice similar to and deposits a process fee of the same amount as that referred to in sub-section (1).

(4) If the transfer of a portion or share of such land be one to which the provisions of section 24 apply there shall be filed notices giving particulars of the transfer in the prescribed form together with

process fees prescribed for the service thereof on all co-sharer tenants of such land who are not parties to the transfer.

[1][(5) The Court, Revenue-officer or Registering Officer as the case may be, shall serve, in the prescribed manner, the notices referred to in the preceding sub-section :

Provided that the service of such a notice shall not operate as an admission of the amount of rent or the area of such land by the landlord or by any co-sharer-tenant of such land on whom such notice is served or be deemed to constitute an express consent of the landlord or such co-sharer tenant to the division of the tenancy or to the distribution of the rent payable in respect thereof :

Provided further that, if a transfer is subsequently set aside or modified by a competent authority in any suit, appeal or other proceedings to which the landlord was not a party, the authority before whom the appropriate suit or proceedings was first initiated shall transmit a copy of such order to the landlord].

"Every transfer": The words include all kinds of voluntary transfer but not bequest until probate is applied for nor a mortgage until there is a decree or order for foreclosure. See sec. 26. Gifts by a Muhammedan are included and can not be made orally, (Srimati Jan V. Fulja Khatun AIR 1941 Cal, 266) and shall be made by a registered instrument. This provision makes transfers of property for a consideration of less than Rs 100/- which are valid under the Transfer of Property Act and the Indian Registration Act, if possession be delivered, invalid and of no effect.

Under the analogous provision of sec. 26C of the B. T. Act there is a similar rule for agricultural holdings.

Since all lands are either agricultural or non-agricultural no tenancy right in any land can after the passing of this Act be transferred except by registered instrument even if the consideration be less than Rs. 100/- except in the cases which the Act excludes from its operation.

The registration of conveyances or transfer deeds is subject to the observance of the conditions laid down in this section. Cf. similar provisions in sec. 26C and sec. 12 of the B. T. Act.

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1. Subs. by E. P. Ord. IX of 1967.

—S. 23

Sec. 23 The requisites are—

(1) A written instrument of transfer,

(2) Statement of the sale price or consideration or the value of the property or portion transferred in the document itself.

(3) Registration by the Registering Officer.

(4) Notices in the prescribed form for service on the landlord and notices on co-sharer tenants when sale is of a portion of the tenancy.

(5) Deposit of process-fees for service of notice. For form of notice see Form No. 1 appended to the Rules.

Process fee—Eight annas for each party to be served : method of service—by registered post with acknowledgement due.

The words "shall not accept for registration" are mandatory; disregard of the provisions will amount to no registration and the transfer will be invalid and inoperative. See Harendra Lal Roy Choudhury, V. Horidasi Debi, 18 CWN 817 PC, Mathura Prasad E. Chandramony, 25 CWN 985 PC. Contravention of the provision of sub-section (1) can not be cured by Sec. 87, Indian Registration Act, because the matter is not one of procedure but of jurisdiction of the Registrar to accept the document. See however SM. Kunja Kamini V. Mangal Chandra 42 CWN 209, a case of under-statement of the value of the property sold.

There may be cases in which the document may not state the fact that it is a non-agricultural tenancy, and it may be registered without the formalities required by this section. In such cases if the omission to state the necessary facts is deliberate and fraudulent the Court may hold that there was a fraud upon the Law of Registration contained herein, and the document will not operate as a registered document to convey the interest to the transferee, (Harendralal V. Hari Dasi, 18 CWN 817 PC). In cases of bonafide doubt or dispute, the omission may not result in the invalidity of the document, but the person not served with notice will not be bound to act as mentioned in this section or the next section.

When there is jurisdiction the wrong exercise of it does not make the order a nullity, (Hridoy Nath Roy V. Ramchandra, 24 CWN 723 ; 12 Pat. 47).

Until notices and process-fees as detailed in sub-section (1) are put in confirmation is not to be made, nor any order or decree of foreclosure of mortgage is to be passed,

Here again there is no question of jurisdiction of the Civil Court or the Revenue Officer. See Hridoy Nath Roy V. Ramchandra, 24 CWN 723.

Sub-section (4) provides for service on co-sharer tenants if there be any, in case of transfer of a portion of the tenancy.

—Ss. 23-24

This is to give them a notice of the transfer so that they may exercise the right of pre-emption given by sec. 24.

Questions may arise whether in case of exchange, sub-lease or partition a notice under this sub-section is required—Exchange and partition are transfers but not being for cash consideration, sec. 24 does not seem to be applicable. So there in no reason tor service of notice on co-sharer tenant, moreover these kinds of transfer are excluded from operation of sec. 24 by Sub-section (11).

Sub-section (5) prescribes the method of service. See Rule 6.—It is to be served by registered post with acknowledgment due. The effect of service is that the landlord is bound to recognize the transferee.

If after the transfer is effected and notices are put in (no matter whether they are actually served or not) the landlord sues without making the transferee a party, the decree will not bind him, (see Jitendra Nath V. Manmohan, 34 CWN 821 PC) as the transfer is operative from the date of the deed.

Effect of notices :—The transferee is not estopped from showing that contrary to the statements in the notice he was not a real purchaser but a benamdar, (Narendra Kishore V. Abdul Majid, 39 CWN 673).

But purchaser would be estopped from pleading that the status was not as described in the notice, (Surendranarayan V. Notan Behari, 35 CWN 114).

"After Service"—Landlord shall not refuse to recognise the transferee as the tenant nor omit to enter the name of the transferee in the rent roll. This provision will operate even in cases when there is a contract forbidding transfer.

A transferee or legatee before the Act who could not enforce recognition on the landlord cannot do so after the Act as the Act is not retrospective. See Annada Prasad V. Ramjan Sarkar, 43 CWN 118.

S. 23 of Act XXIII of 1949 has no application in case of oral transfer of land by way of gift with structures thereon inter vivos.
Haji Aklema Khatun Vs. Shah Alam. (1981) 33 DLR 62.

24. [1][(1) If a portion or share of the non-agricultural land held by a non-agricultural tenant is transferred, one or more co-sharer tenants of such land may, within four months of the service of notice issued under section 23 and, in case no notice had been issued or served, then within four months from the date of knowledge of such transfer, apply to the court for such portion or share to be transferred to himself or to themselves, as the case may be.]

1. Subs. by E. P. Ord. IX of 1967

—S. 24

(2) The application under sub-section (1) shall be dismissed unless the applicant at the time of making it deposits in Court the amount of the consideration money or the value of [1][the portion or share of the property] transferred as stated in the notice served on the applicant under section 23 together with compensation at the rate of five per centum of such amount.

(3) If such deposit is made, the Court shall give notice to the transferree to appear within such period as it may fix and to state what other sums he has paid in respect of rent for the period after the date of transfer or in annuling encumbrances on the property and also what other amounts, if any, have been spent by him, between the date of the transfer and the date of service of the notice of the application, in erecting any building or structure or in making any other improvement in [2][the portion or share of the property] transferred. The Court shall then dirent applicant, including any person whose application under sub-section (4) is granted, to deposit within such period as the Court thinks reasonable such amount as the transferee has paid or spent on these accounts together with interest at the rate of six and a quarter per centum per annum with effect from the date on which the transferee made such payments or spent such amounts :

Provided that if the correctness of any amount claimed to have been paid or spent by the transferee on any such account is disputed by any applicant the Court shall enquire into such dispute and, after giving the transferee an opportunity of being heard, determine the amount actually paid or spent by the transferee on any such account and shall then direct the applicant to deposit the amount so determined with interest at the rate of six and quarter per centum per annum as aforesaid within such period as the Court thinks reasonable.

(4) (a) When an application has been made by one or more co-sharer tenants under sub-section (1) any of the remaining co-sharer tenants including the transferee, if one of them, may within the period of four months referred to in the said sub-section or within one month of the service of notice of the application, whichever is later, apply

1. Subs. by E P. ord. No. IX of 1967
2. Subs. Ibid

—S. 24

to join in the said application, and any co-sharer tenant who has not applied under sub-section (1) or has not applied to join under this sub-section, shall not have any further right to purchase under this section.

(b) Such application to join as a co-applicant shall be dismissed unless within such period as the Court may fix, the applicant deposits in Court for payment to the applicant under sub-section (1), such sum, as the Court shall determine as the share to be paid by him for the purposes of sub-section (2).

(c) If such deposit is made, the Court shall grant the application to join and thereafter such applicant shall be deemed to be an applicant under sub-section (1).

(5) If the deposits required under sub-section (2) or clause (b) of sub-section (4), as the case may be, and under sub-section (3) are made, [1][* *] the Court shall make an order allowing the application and directing that the deposits made under sub-sections (2) and (3) shall be paid to the transferee or to such persons as the Court thinks fit.

[2][* * * * *]

(6) Notwithstanding anything contained in any other law for the time being in force the Court shall, if the applicant under sub-section (1) or any person whose application under sub-section (4) is granted disputes the correctness of the amount of the consideration money as stated in the notice issued under section 23 inquire into such dispute before making an order under sub-section (5) and after giving the transferee an opportunity of being heard determine for the purpose of this section the amount of the consideration money which the transferee has actually paid for the transfer of the [3][the portion or share of the property]

1. The words "and, in the case where the application is made by the immediate landlord, the Court is satisfied that the condition referred to in sub-section (1) have been fulfilled" omitted by E.P. Ord. IX of 1967.

2. Omitted by E. P. Ord. IX of 1967. Omitted portion ran as follows:—
"Provided that if both the immediate landlord and the co-sharer tenant have applied under this section and the application of the co-sharer tenant is allowed under this sub-section, the application of the immediate landlord shall be dismissed."

3. Subs. Ibid

—S. 24

and the amount so determined shall be deemed to be the consideration money referred to in sub-section (2) and where the amount of the consideration money has been so determined the deposit made under that sub-section shall for the purposes of sub-section (5) be the amount so determined together with the compensation at the rate of five per centum of such amount.

(7) In making an order under sub-section (5) in favour of more than one co-sharer tenant, the Court may apportion the property comprised in the portion or share transferred among the applicants in such manner as it deems equitable after taking existing possession into consideration; the Court shall so apportion the said property or portion thereof on the request of any applicant and, in this case, may require the applicant who makes such request to deposit, within such period as the Court may fix, such further sums as the Court considers necessary for equitable distribution among the remaining applicants:

Provided that no apportionment order under this sub-section shall operate as a division of the tenancy.

(8) From the date of making of the order under sub-section (5)—

[1][(i) the right, title and interest in the share or portion of the non-agricultural land accruing to the transferee from the transfer shall, subject to any order passed under sub-section (7), vest free from all encumbrances, which have been created after the date of transfer, in the co-sharer tenant whose application to purchase has been allowed under sub-section (5) ;]

(ii) the liability of the transferee for the rent due from him on account of the transfer shall cease, and

(iii) the Court, on further application of such applicant, may place him in possession of the property vested in him.

(9) An appeal from any order of a Court under this section shall lie to the Civil Appellate Court having jurisdiction to entertain such appeals.

(10) Nothing in this section shall take away the right of pre-emption conferred on any person by Muhammadan Law.

1. Subs. by E.P. Ord. IX of 1967.

S. 24

(11) Nothing in this section shall apply to—

(a) a transfer to a co-sharer in the tenancy whose existing interest has accrued otherwise than by purchase, or

(b) a transfer by exchange, [1][*] or partition ; or

(c) a transfer by bequest or gift (including heba but excluding heba-bil-ewaz for any pecuniary consideration) in favour of the husband or wife of the testator or the donor or of any relation by consanguinity within three degrees of the testator or donor, or

(d) a wakf in accordance with the provisions of the Muhammadan Law, or

(e) a debuttor or any other dedication for religious or charitable purposes without any reservation of pecuniary benefit for any individual.

Explanation.—A relation by consanguinity shall for the purposes of this sub section, include a son adopted under the Hindu Law

S.24 Co-sharer need not be impleaded in an application for pre-emption under sec. 24.

Hosne Ara Begum Vs. Anwara Begum (1985) 37 DLR 154.

—Provision of pre-emption contained in s. 24 shall not apply to a co-sharer whose existing interest has accrued otherwise than by purchase.

The provision of pre-emption in section 24 shall not apply to transfer to a co-sharer in the tenancy whose existing interest has accured otherwise than by purchase.

S.M. Basiruddin Vs. Zahurul Islam Chowdhury. (1983) 35 DLR (AD) 230.

—Lessee is not a co-sharer of the land with the lessor. Ibid

—Heir of transferee added in a pre-emption case after the period of limitation— Preemption claim as against such heir barred.

Giri Bala Das. Vs. Ba udev Dey. (1980) 32 DLR 68.

—Partial pre-emption cannot be allowed u/s. 24 of the Non-Agricultural Tenancy Act. Ibid

1. The word "sub-lease" omitted by E.P. Ord. No. IX of 1967

—S. 24

—Provisions of Order 9, r. 13, C.P. Code, to set aside an order passed ex-parte in a proceeding started under section 24 of the Non-Agricultural Tenancy Act for pre-emption of non-agricultural land are applicable.

Ibrahim Hossain Vs. Md. Khorshed Ali. (1979) 31 DLR 407.

—The procedure provided in the Code in regard to suits are applicable in all independent proceedings of original nature, Non-Agricultural Tenancy Act does not specifically make the Code of Civil Procedure applicable to a case under section 24 of this Act. Section 4 of the Civil Procedure Code does not limit or otherwise affect any Special Law ; in other words, the provisions of the Code of Civil Procedure which run counter to a special or local law are excluded. Section 4 of Code does not bar the applicability of the Code where special law or local law is silent.

Ibrahim Hossain Vs. Md. Khorshed Ali. (1979) 31 DLR 407.

—Ingredients of s. 24 of Act XIII of 48 and those of sec. 96 of Act XXVIII of 1951 are different—Provisions of sec. 24 of Act XXIII of 1949 attracted in case of a land in a municipal area.

The ingredients of section 24 of the Non-Agricultural Tenancy Act and those of section 96 of the State Acquisition and Tenancy Act are different. Some of these distinctions are that while section 96 confers right of preemption on the holder of land contiguous to the land transferred, no such holder of land can exercise the right of pre-emption under section 24 of the Non-Agricultural Tenancy Act which merely confers the right of pre-emption on a non-agricultural tenant in respect of non-agricultural land. Moreover the expression 'holding' in section 96 which is not to be found in section 24 also makes for a meaningful distinction.

Section 24 of the Non-Agricultural Tenancy Act has not been rendered ineffective nor impliedly repealed so as to compel the owner of any land falling within the municipal area to prefer an application under section 96 of the State Acquisition and Tenancy Act.

Md. Abdur Rouf Vs. Ahmuda Khatun. (1981) 33 DLR (AD) 323.

Sec. 24 read with S. 85 (2).

—Non-agricultural land held by a tenant under the Govt.—No pre emption in case of such land allowed.

Abdur Rahim Vs. Sayeed Miah (1981) 33 DLR 10.

—Whether, in view of the provisions of section 85 of the Non-Agricultural Tenancy Act, an application for pre-emption of non-agricultural land under section 24 of the Act is maintainable.

This question requires no further consideration as the point involved therein is already settled by the Full Bench decision, in the case of Akhtaruzzaman Vs Jadu Nath Pal (1965) 17 DLR 384 (FB).

Md. Abdur Rouf Vs. Ahmuda Khatun. (1981) 33 DLR (AD) 323.

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S. 24 (1) —Pre-emption may be allowed only in the case of transfer of the land to a co-sharer tenant.

S. M. Basiruddin Vs. Zahurul Islam Chowdhury. (1983) 35 DLR (AD) 230.

– Nadabipatra not a deed of transfer– No pre-emption.

A nadabipatra being merely a deed of disclaimer disclaiming any interest in the properties transferred by an earlier sale-deed is not itself a deed of transfer and, therefore, no right of pre-emption can be claimed upon the registration of such a deed of nadabipatra.

Simply the fact that the document was registered and ad valorem stamp-fee was paid on the document—that by itself cannot turn a deed of disclaimer into a deed of transfer. (1959) 11 DLR 539.

—Pre-emption in respect of non-agricultural land is only possible under section 24 of the E. B. Non-Agricultural Tenancy Act– Provision of section 96 of the E.B.S.A.T. Act not applicable to such case.

Forman Ali Howladar V. Helaluddin Pashari, (1968) 20 DLR 1197.

—Section 24 not repealed by section 81(2)(3) of the State Acquisition Act. It cannot be said that sub-sections (2) and (3) of section 81 of the E. B. State Acquisition and Tenancy Act have repealed section 24 of the Non-Agricultural Tenancy Act by implication. Ibid.

—There is specific provision for pre-emption of non-agricultural land in the East Bengal Non-Agricultural Tenancy Act. Under that Act a contiguous owner cannot claim a right of pre-emption.

Abdul Khaleq V. Jadav Chandra Mali, (1968) 20 DLR 562.

—Sharing the tenancy itself in relation to the land is the crucial test upon which the right of pre-emption is dependent.

Brindaban Chandra Chowdhury V. Rezia Begum. (1964) 16 DLR 77.

—A right of pre-emption similar to that conferred by section 26F of the Bengal Tenancy Act was intended to be given to co-tenants under section 24. Ibid.

—Right of pre-emption under section 24 of the East Bengal Non-Agricultural Tenancy Act is a vested right. Acquisition by Government of the landlord's rent receiving interest does not take it away. Ibid.

—Court's function when allegation of a collusive suit is made to the effect that the collusive suit was filed in order to defeat an application under section 26F of the Bengal Tenancy Act or section 24 of the E. B. Non-Agricultural Tenancy Act for pre-emption.

The case reported in 9 DLR (Surendra Chandra V. Sreenath) is merely an authority for the propositoin that a court is not incompetent to decide

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as to whether the sale in question has been set aside by a collusive or fraudulent suit. It is no authority for the proposition that in every case, where a court finds that there has been a fraudulent suit, it must necessarily allow an application under section 26F of the Bengal Tenancy Act.

In an application of the nature, either under section 26F of the Bengal Tenancy Act or under section 24 of the East Bengal Non-Agricultural Tenancy Act, 1949 what is required is, that the court must examine, fairly and squarely, the facts of the case and decide for itself whether a transfer is still subsisting.

A court in disposing an application for pre-emption may go into the question as to whether a suit to set aside the relevant sale was collusive or fraudulent, but a finding to that effect would not necessarily become the decisive factor in disposing of the application. What must be looked into is conduct of the parties ; if it leads to a position that transference still subsists then the application should be allowed.

Meghu Bepari V. Kaloo Sheikh. (1966) 18 DLR 317.

Just as the decision of an ordinary Civil Court with respect to the question whether the matter involved is or is not a civil right relates to its jurisdiction in a proceeding under section 24 the decision of the question whether or not the transaction in dispute is within section 24 is a matter relating to jurisdiction, Paresh Nath Sikder V. Abdur Rehman, PLD 1963 Supreme Court 473=APR 1963 S.C. 360=(1963) 15 DLR S.C. 425.

Lessee of a portion of tenancy : Not co-sharer in tenancy—Has no right to pre-emption.

—The expression "non-agricultural land held by non-agricultural tenant" occurring in section 24 of the Non-Agricultural Tenancy Act has been used in section 26F of the Bengal Tenancy Act and thus refers to the non-agricultural tenancy whereof a share or portion has been transferred. In other words the right of pre-emption conferred by the section is confined to the cosharers in the tenancy comprising the subject-matter of the disputed transfer. A lessee taking settlement of same land, even though that may be a portion of tenancy held by his lessor, establishes no connection whatsoever at all with the remaining portion of that tenancy. The subject-matter of his lease becomes a separate and independent unit and represents his 16 annas interest. He has thus no connection with the remaining interest of his lessor and cannot, therefore, be a co-sharer with respect thereto. Mohindra Chandra Ghose V. M. Mojibur Islam, PLD 1961 Dacca 356—(1960) 12 DLR 785.

—Right not exercised on transfer of part of tenancy—No bar to subsequent exercise of right on subsequent transfer.

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Where a right of pre-emption is not exercised by A when a part of the tenancy is transfered to B. It cannot be said that "A" cannot exercise the right when there is a transfer of tentancy to 'C'. Akhtaruzzaman V. Jadunath, (1965) 17 DLR 384 (FB).

Scope : Transfer of share of tenancy—Right of pre-emption becomes an accrued right.

The words used in the East Bengal Non-Agricultural Tenancy Act, 1949, are "by the provisions of this Act" and not "under the provisions of this Act". A power to avail oneself of the benefit of the section is a right vested by the provisions of section 24 of the Act. On transference of a portion or share of land by a co-share, the said right becomes an "accrued right" under the said provisions of section 24. Haji Akhtaruzzaman V. Jadunath Pal, 17 DLR 384 (F.B.)

—Sharing the "tenancy" itself in relation to the land is the crucial test upon which the right of pre-emption is dependent. The position, therefore, resolves itself into this : If a share of portion of a non-agricultural land is sold, then a person can be a co-share tenant, even if he is not a copossessor (physically speaking) of the specified land. provided a co-tenancy is established in respect of the land itself. The co-tenancy itself must appertain to the disputed land and not to any other land. This is the plaint meaning of the words co-sharer tenants of such land. Brindaban Chandra Chowdhury V. Musammat Rezia Begum, (1964) 16 DLR 77=PLR 1963 Dacca 1051 (DB).

—Transposition of superior land-lord by Government—Right of pre-emption not affected.

The right by which the petitioner have claimed pre-emption under section 24 would not be rendered nugatory by the mere transposition of the former superior landlord, in respect of the tenancy, by the Provincial Government. Brindaban Chandra Chowdhury V. Musammat Rezia Begum, (1964) 16 DLR 77: PLR 1963 Dacca 1051 (DB).

In the light of the proviso to section 85(2) of the Act a tenant in respect of a non-agricultural land would not be deprived of a right deposed in him by the provisions of the Act on the only ground of acquisition of superior right in the land by Government. The right vested in a tenant by the provisions of the Act including a right which is immediately enforceable and also a right which is enforceable in future, on the happening of a contingency. Haji Akhtaruzzaman Vs. Jadunath, (1965) 17 DLR 384 (FB).

Land : Means structures on land.

—The word "land" in section 24 of the East Bengal Non-Agricultural Tenancy Act, 1949 is intended to included structures on the land also if it is also transferred along with land as part and parcel of the land and not separately

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from the consideration for both is one and the same and in that case the right of pre-emption will extend upto those structures on the land transferred. Muhammad Arabullah V. Durgaprasad Tribedi, PLD 1960 Dacca 249.

—Lease of a portion of tenancy—Not co-sharer in tenancy—Has right to pre-emption.

The expression "non-agricultural land held by a non-agricultural tenant" occurring in section 24 of the Non-Agriculturul Tenancy Act has been used in the same sense in which the term "holding" has been used in section 26F of the Bengal Tenancy Act and thus refers to the non-agricultural tenancy whereof a share or portion has been transferred. In other words, the right of pre-emption conferred by the section is confined to the co-sharers in the tenancy comprising the subject-matter of the disputed transfer. A lessee taking settlement of some land, even though that may be a portion of tenancy held by this lessor, establishes no connection whatsoever at all with the remaining portion of that tenancy. The sub matter of his lease becomes a separate and independent unit and represents his 16 annas interest. He has thus no connection with the remaining interest of his lessor and can not, therefore, be a co-sharer with respect thereto. Mohindra Chandra Ghose V. M. Mujibul Islam (1960) 12 DLR 785=PLD 1961 Dacca 356.

Ss. 24 & 85(2): Right of pre-emption under section 24 not affected by transposition of the superior landlord of the non-agricultural tenancy by Government. Brindaban Chandra Chowdhury V. Rezia Begum. (1964) 16 DLR 77.

S. 24(1): Question whether a transfer falls under section 24(1) of the East Bengal Non-Agricultural Tenancy Act, so far as to be pre-emptible is a question relating to jurisdiction of the court,

Just as the decision of an ordinary Civil Court with request to the question whether the matter involved is or is not a civil right relates to its jurisdiction, in a proceeding under section 24 the decision of the question whether or not the transaction in dispute is within section 24 is a matter relating to jurisdiction. Paresh Nath Sikdar V. Abdur Rahman Jamadar (1963) 15 DLR (SC) 425.

S. 24(i)(ii): "Lease" of tenancy by a tenant is a "sub-lease" and is excluded from the the purview of section 24(i).

Section 24 of the East Bengal Non-Agricultural Tenancy Act deals with transfers by tenants. A tenant is himelf a lease and when he grants a lease it is always a sub-lease which means a lease by a person who is himself a lessee or a tenant. There was no need to provide for an exception in sub-section (ii) of section 24 because the only lease possible by a tenant is a sub-lease, A simple lease, i.e, a lease which is not a sub-lease cannot be created by a tenant at all.

Ibid

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S. 24(2): Valuation of the property sought to be pre-empted in determining the Court's jurisdiction.

Value of the property means the consideration money paid by the Kabala in respect of the land sold which does not include the amount deposited by way of compensation to be paid to the dis-appointed purchaser. This statutory compensation cannot be regarded as the value of the land for the purpose of jurisdiction. Mehendra Chandra Deb Roy V. Saraswati Rani Pal, (1969) 21 DLR 404.

By this section a right of pre-emption is given to (1) co-sharer tenants and (2) to landlord of the tenancy transferred but in the case of the landlord he must (a) be in actual possession of a contiguous piece of land and (b) satisfy the court that he requires the land for residential purpose, manufacturing, or other purposes as mentioned in sec. 4 of the Act.

The right is to be exercised within 4 months of the service of notice.

If notice be not served then application may be made within a reasonable time from the date of knowledge. Cf. Mukunda Lal Roy V. Sudarshan Mukherjee, 61 Cal. 351: AIR 1934 Cal. 550; Surja Kumar V. Munshi Noab Ali, 35 CWN 688, as the period of limitation stated in sec. 24(1) does not apply in such a case (Ayetunnissa V. Johar Ali, 45 CWN 735). Cf. Analogous provisions in Sec. 26F, B. T. Act where however by an amendment in 1938, the landlord was deprived of his right of pre-emption.

This section is not retrospective and does not affect transfers effected before this Act came into force. (Bepin Chandra V. Mahim, 44 CWN 640 ; Prafulla Chandra V. Rajmohan, 43 CWN 1172 contra). But in a case under the B. T. Act registration after the Act though execution was before the Act, was held to attract the operation of this section, (Gobardhan V. Gunadhar, 44 CWN 802).

Proviso :—(a) gives priority to the co-sharer tenant if both landlord and co-sharer tenant apply ;

(b) lays down certain restrictions or conditions precedent, for the landlord. Unless the said conditions are fulfilled the landlord's application must be dismissed, even if he be the only applicant, as already stated he must be in actual i.e. khas possession of contiguous land, and he must satisfy the court that the land is required for any of the purposes mentioned in sec. 4 ;

(c) lays down a further restriction on the landlord ; in case of execution sales under decrees for rent, or under certificate for rent, under the Public Demands Recovery Act, the decree-holder has no right to apply for pre-emption, presumably because he had already an opportunity to bid at the auction sale. Sales in execution of decrees or certificates for arrears of rent do not seem to be within either section 23 or 24.

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When the property is sold in 2 lots, right of pre-emption can not be exercised in respect of one lot only, (Surabala Basu V. Rukmini Kanta, 42 CWN 288). But in case of sale of 2 holdings one can be pre-empted, (Manoranjan Chatterjee V. Peary Mohan De, 43 CWN 220).

Whether question of, the benami nature of the transfer can be raised in a pre-emption proceeding— held no : (Satyendranath V. Fulcm Bibi 36 CWN 486). held yes, (Santasila V. Narendranath, 48 CWN 451) ; pre-emption can be refused if the transfer be not real (Basanta Kumar V. Dasarathi, 43 CWN 549).

Sub-section (1) speaks of transfer of land in a non-agricultural tenancy. Section 3 provides that there shall be two classes of non-agricultural tenants viz, (a) tenants and (b) under-tenants. Therefor, this section is attracted to the transfer of the whole or a portion of the holding of a non-agricultural tenant or an under-tenant.

Restoration after dismissal for default.—After dismissal for default and withdrawal of deposit by a creditor of the depositor, pre-emption can be ordered, (Nathuram V. Babulal, 40 CWN 481 PC).

Time limit for deposit and filing of notice is mandatory, but if delayed by Court officers. Court will relieve against hardship, (Sachindra Nath V. Trailokyanath, 40 CWN 1023, Fozle Rahman V. Baharulla 41 CWN 444).

Estoppel of transferee :—Transferee can not turn round and say that his status is other than what is mentioned in notices or that he is governed by some other law than the Non-Agricultural Tenancy Act, (Mohini Mohan V. Radha Sundari, 39 CWN 1014) nor can the transferee say that he acquired nothing by the purchase as the holding was sold away previously (Maharaja Bahadur Prodyut Kumar V. Hamidar Rahman, 41 CWN 1154).

Document set aside : No pre-emption. (Basanta. Kumar V. Dasarathi, 43 CWN 549).

Co-Sharer :—An unrecognized transferee. who has no right to be recognized by landlord, is not, but one who has been recognized even though by a fractional co-sharer landlord, is a cosharer tenant (Altab Ali V. Abdul Majid, 45 CWN 1068).

Even a purchaser subsequent to the transfer sought to be pre-empted is entitled, (Hirendralal Sarkar V. Kanaklata Chowdhury, 46 CWN 849; 54 CWN 442) ; unregistered transferee held entitled to pre-empt, (Amir Sardar V. Munshi Ismail, 51 CWN 795).

A landlord may become a co-sharer tenant by purchase and since there is no merger he may make an application as a co-sharer tenant under his purchase, (Amjad Ali Talukdar V. Rohini Kanta, 45 CWN 901).

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Co-sharer tenant includes the benamdar of such a tenant and such a benamdar can apply, Mukti Debi V. Manorama Debi, 40 CWN 1211).

A purchaser from a tenant of a portion of the tenancy before the Act, who was not entitled to recognition because of provision in the contract or otherwise will not have locus standi, as he is not in the eye of law a co-sharer tenant, (Abdul Majid V. Altab Ali, 44 CWN 500). But if he be recognized by the landlord or a co-sharer landlord he can apply. (Altab Ali V. Abdul Majid, 45 CWN 1068) Or. IX, r. 13 C.P. Code, applies—See Gour Ali V. Afsar Uddin, 53 CWN D.R. 55.

An application under this section is in the nature of an original proceeding Section 141, CPC. The right given by the Section is not a personal right :—It is acquired by subsequent purchase from a co-sharer, (Hirendralal Sarkar V. Kanaklata Chowdhury 46 CWN 849) Sub-section (2) is mandatory. The application must be accompanied by deposit of the amount of consideration as mentioned in the notice together with compensation at 5 p. c. of the said amount otherwise application shall be dismissed even when deposit is made before time has run out (Girish Mandal V. Jadabpur Estate Ltd. 39 CWN 232 ; But see Sisir Kumar V. Tarangini 41 CWN 1201).

The amount of consideration may be questioned as being untrue. See Sub-section (6). The time for deposit cannot be extended by the Court beyond four months, (Sailendra V. Trailokya, 40 CWN 1023), but when an application was filed on Saturday and the deposit was made on Monday because of the practical difficulty of depositing on a Saturday, and the day of deposit was within time the delay did not render the application non-maintainable, (Sisir Kumar V. Tarangini, 44 CWN 1201).

When there was some mistake of the court and deposit could not be made, court can extend time, (Gadadhar V. Gopal Chandra 40 CWN 680.)

Amount to be deposited—amount mentioned in the deed plus compensation 5 p.c. If deed does not recite amount of mortgage as consideration, but payment of mortgage is recited, and notice does not mention the amount of mortgage as consideration the transferee cannot ask for deposit of the mortgage amount, (Kunja Kamini V. Mangal Chandra, 42 CWN 209), nor can the transferee claim unpaid amount of mortgage due to himself, (Benoy Kumar V. Sk. Eakub, 42 CWN 1110). Sub-section (3) provides that notice shall be given only after the deposit under sub-section (2). The transferee is required to appear and state what other sums besides the consideration mentioned he has paid on account of the property in respect of (i) rents and (ii) for annulling encumbrances on the property. The word "annulling" used in sub-sec. (3) is not appropriate, because a purchaser of a non-agricultural holding cannot annul (in fact under the T. P. Act or this Act there is no right given to annul) encumbrances. A purchaser under Act VII

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of 1868 of a tenure may annul but no one can pre-empt him. It seems to have been used for the word "paying off". The mistake is due to copying the language of Sec. 26F of the B. T. Act where an encumbrance may be annulled by the purchaser at a rent-sale. The applicant for pre-emption has then to further deposit the sum so spent together with 6-1/4 p.c. interest per annum calculated from the date of payment, to date of deposit.

Encumbrances what are—mortgage is, (Behari Lal V. Pulin Behary, 38 CWN 654). Adverse possession is, (Munsabali V. Assadulla, 16 CWN 831), An easement will also be an encumbrance. Under-tenancy is, (Bidyutlata V. Ahad Ali 45 CWN 165 ; Amiya Pal Chowdhury V. Kartik Chandra, 50 CWN 519). Any restriction on the full exercise of power as owner will be Cf. Ramlal V. Suradhani 39 CWN 897.

'Then direct' refers to a time after the transferee has appeared and filed a statement. The sum to be deposited will not include the unpaid money due to the transferee himself on a mortgage which is not mentioned in the conveyance. See Benoy Kumar V. Eakub, 42 CWN 1110. 'Such period as the Court thinks reasonable'—what time is reasonable is within the discretion of the Court. As this time is fixed by the Court, the Court would have power to extend the same, see Section 148 C. P. Code.

Sec. 24(4)(a): Makes provisions for co-sharer served with notice applying to be joined as party applicant.

Limitation—4 months from date of service of notice of transfer or 1 month from date of application by a co-share, whichever is later (note, time does not run from the date of service of application). It also provides that co-sharers who are not original applicants, or application under this Section, are ineligible to get pre-emption. As to the time limit of 1 month of application for pre-emption, there may be cases in which the notice of co-sharers' application for pre-emption may not be served before the expiry of one month of the application. In such cases the court will receive an application beyond 1 month, (Sachindra V. Trailokya, 40 CWN 1023). But See Fazle Rahman V. Baharalla. 41 CWN 444. A transferee co-sharer tenant not protected by sub-section (11), clause (a) can come forward to join as a co-applicant, (Samiraddi V. Promoda Sundari, 41 CWN 1252). Sub-sec. (4) empowers the Court of fix the share of the applicants for pre-emption. They may be allowed to pre-emption in equal shares or in shares proportionate to their original shares, Khoshal Chandra V. Upendra Nath, 35 CWN 1058 supports the latter view. The condition precedent to being allowed to join as co-applicant is deposit of money. Sub-sec. (5) deals with the final disposal of the application and the payment out of the moneys in deposit. If application be dismissed for default and thereafter deposit is withdrawn by creditor of depositor in collusion with transferee, on restoration, pre-emption granted and money ordered to be brought back, (Rakhal Das V. Saralabala, 40 CWN 1182).

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Sub-sec. (6) deals with cases where the amount of consideration stated in the notice is disputed by the applicant for pre-emption. The Court is given the power to determine the amount of consideration after giving the transferee an opportunity of being heard. It is the amount so determined by the Court together with compensation at the rate of 5 p.c. thereon that will be paid to the transferee under sub-section (5). Note that there is no similar provision in Section 26F, B. T. Act.

Sub-sec. (7) provides for equitable distribution and appointment of the pre-empted property amongst different applicants, and as a corrolary the Court is given further power, to ask for additional deposit. In doing so the Court will as in partition cases, apply the principle of maintaining the present possession of the parties as far as possible. See Nabiraddin V. Osman Gani, AIR 1921 Cal. 481. For shares to be allotted to each, See Khosal Chandra V. Upendra Nath, 35 CWN 1058.

What vests in the applicant on his application succeeding, is the title which the transferor purported to tranfer—other rights which the transferor might have in the property will remain unaffected, (Hussain Ali V. Kalachand, 51 CWN 415 at p. 417). Question of title may be gone into in an application but not questions of intricacy, (Ibid) Second application, within time limited maintainable when first one was dismissed on technical grounds, and there was no decision on merits, (Amantalal Saha V. Kamakhya Charan, 41 CWN 1371). Construction of building by transferee is really an encumbrance created after transfer —on pre-emption succeeding cost of construction cannot by claimed, (Belayet Ali V. Radhikalal, AIR 1930 Cal. 547)

Sec. 24(8)(a): Right, title and interest accruing to the transferee from the transfer, free from encumbrances annulled, i.e. paid off and discharged, and from encumbrances created after transfer, vests in the applicant who succeeds. See Hossain Ali V. Kalachand, 51 CWN 415 at p. 417. Note that it is the right, title and interest transferred and not the holding which vests. See Hafizur Rahman V. Amjad Ali, 73 CLJ. 529, Transferee acting in a way that price of land deteriorates, e.g., by cutting down trees & during pendency of pre-emption proceedings, is liable for damages, (Tarini Prosad V. Rakhal Chandra, 39 CWN 459).

Sub-sec. (8): Clause (ii) provides that on making of an order for preemption the liability of the transferee for rent "on account" of the transfer shall "cease". So the transferee remains liable for rent before such cesser. Sub-Sec. (8), Clause (iii) prescribes a mode of execution of such order. It is not necessary to bring a separate suit for possession. See Mohini Mohan V. Radha Sundari, 39 CWN 1014. Sub-sec, (9) provides for appeal. For the Civil Appellate Court having jurisdiction, see Bengal and Assam Civil Court Act (Act XII of 1997). No second appeal lies as none is given by the section (Santosh Kumar V. Upendra Nath, 45 CWN 790). But High Court has the power of revision both under Sec. 115 C. P. C and Art. 227 of the Constitution.

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Sub-Sec. (10) Saves the right of pre-emption under Muhammedan law. If transferee is pre-empted under Muhammedan Law, no application for preemption under this section will lie, (Nalinaksha v. Abdul Jalil, AIR 1936 Cal. 398. Sub-sec. (11) enumerates the cases and classes of transfer which are not affected by this Section and on which no right of pre-emption arises under this Act.

Co-sharer whose existing interest has accrued otherise than by purchase, indicates a person who is not a stranger to the original tenant and his heirs. See Sindhuram V. Ambika Charan. 45 CWN 658. A partition is merely a separation of enjoyment according to shares, a joint estate is converted into estates in severalty, (Atrabunnessa V. Safatulla, ILR 43 Cal. 504). Note that debuttor and wakf are excluded from the operation of the section.

25. SAVING AS TO STATEMENTS IN INSTRUMENTS OF TRANSFER WHERE LANDLORD IS NOT A PARTY.—Notwithstanding anything contained in the [1][Evidence Act], 1872, (I of 1872) nothing contained in any instrument of transfer to which the landlord is not a party shall be evidence against the landlord of the permanence, the amount or fixity of rent, the area, the transferability or any incident of any tenancy referred to in such instrument.

In spite of secs. 5-13 of the Evidence Act, 1872, statements in a deed of transfer to which the landlord is no party are made inadmissible as evidence against the landlord to prove.

(i) permanence,

(ii) the amount or fixity of rent,

(iii) the area of the holding

(iv) the transferability or any incident of the tenancy.

The language of the Section is copied from section 18A. B. T. Act, Document is not admissible against landlord to prove existence or assertion of his title, (Maharaja Srish Chandra V. Kala Chand, 46 CWN 169 at p. 172). The document can, however, be given as evidence for other purpose, e. g., fact of transfer, (Keshava Prosad V. Brohamadeb, AIR 1933 Pat. 656). The section applies to exclude the document even through its date be before the Act came into force (Ibid). A sale certificate is not an instrument of transfer under this section, and is admissible (Rani Basanta Kumari V. Ganendra Nath, 71 CLJ 504). See Ujirali V. Sudhai Behara. 35 CLJ 182 on the interpretation of the section. Held in Dwarkadas Marwari V. Sm. Parbati Debi, 46 CWN 770 at p. 771 that the section excludes document as evidence of incidents, but not as assertions of title or claim. That it is submitted, is a narrow view and goes against the spirit of the section.

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1. The words within square brackets were substituted for the word "Indian Evidence Act" by E.P. Ord. XXVIII of 1960 First Schedule.

—Ss. 26-26A

26. INTERPRETATION—(1)In this Chapter "transferee", "purchaser" and "mortgagee" include their successors-in-interest.

(2) In section 23,—

(a) "transfer" does not include partition [1][*] or until a decree or order absolute for foreclosure is made, simple or usufructuary mortgage or mortgage by conditional sale ;

(b) "transferor" includes a person whose interest in any non-agricultural land or portion or share thereof has terminated in the circumstances mentioned in sub-section (2) or sub-section (3) of that section.

Sec. 26 defines the terms "transfer" and transferee" for the purpose of the Chapter.

Sub-Sec. (2), Cl. (a) excludes sub-lease and partition also excluded by Sec. 24 (11) (b) and mortgage, before any foreclosure decree or an order absolute directing foreclosure is made. For similar provision see sec. 23 (3).

Cl. (b) provides that "transferor" includes a person whose interest has terminated in circumstances mentioned in sec. 23 (2) and Sec. 23(3) i.e. by bequest or court sale.

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[2][26A. Bar to sub-let.—(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or in any contract, no non-agricultural tenant shall sub-let the whole or any part of his tenancy on any terms or conditions whatsoever.

(2) If any tenancy or any part of a tenancy is sub-let, in contravention of the provision of sub-section (1), the interest of the non-agricultural tenant in the tenancy or in that part of the tenancy, as the case may be, shall be extinguished,

1. The words "or a sub-lease" omitted by E.P. Ord. IX of 1967
2. Ins. Ibid

and the tenancy or the part of the tenancy shall vest in the Provincial Government from the date of such sub-letting free from all encumbrances.]

[1][* * * * *]

1. Chapters VI & VII omitted, by E.P. Ord. no. IX of 1967. The omitted section of chapter VI & VII ran as follows—

"27. Power to order survey and preparation of record-of-rights.—The Government may in any case and in particular, in any of the cases specified in sub-section (2) of section 101 of the Bengal Tenancy Act, 1885, if it thinks fit, make an order directing that a survey be made and a record-of-rights be prepared by a Revenue-officer in respect of all non-agricultural lands in any local area, estate or tenure or part thereof whether or not the said Act extends to such area, estate, tenure or part.

(b) where any of such non-agricultural lands are comprised in a tenancy which includes lands other than non-agricultural lands, the Revenue-officer shall—

(i) divide the tenancy so as to constitute separate tenancies for the non-agricultural lands and the other lands ;

28. Applicability of the provisions of Chapter X of the Bengal Tenancy Act, 1885.—When an order under section 27 has been made.—

(a) the particulars to be recorded shall be specified in the order and may include, either without or in addition to other particulars any of those particulars specified in section 102 of the Bengal Tenancy Act, 1885 (VIII of 1885).

(b) subject to any rules made under this Act, all the provisions of Chapter X of the Bengal Tenancy Act, 1885, and the rules made thereunder shall insofar as they are not inconsistent with the provisions of the Act, apply as if such order is an order made under section 101 of the said Act in respect of lands used for purposes connected with agriculture or horticulture.

29. Order for estimate of fair and equitable rents of non-agricultural lands and preparation of a settlement rent-roll,—When an order has been made under section 27 in respect of any local area, estimate or tenure or part thereof of which a settlement of land revenue is being or is about to be made the Government may make an order directing the Revenue-Officer, after recording under section 28 those particulars which are relevant and after publication of the draft of the record-of-rights—

CHAPTER VIII

Improvements

64. DEFINITION OF "IMPROVEMENT".—For the purposes of this Act the term "improvements" used with reference to tenancy shall mean any work which adds to the value of the non-agricultural land

(a) to estimate fair and equitabe rents for non-agricultural tenants of every class in accordance with the provisions of this Act. and

(b) to estimate the rental value for all or any non-agricultural lands which are held khas by a landlord,

in such local area, estate or tenure or part thereof, and then to prepare in the prescribed form and manner a settlement rent-roll in which the rents and rental values so estimated together with such other particulars as may be prescribed shall be specified.

30. Procedure where both non-agricultural and other lands are concerned —Notwithstanding anything contained in the Bengal Tenancy Act, 1885, when an order has been made under section 29 directing a Revenue officer to prepare a settlement rent-roll in respect of non-agricultural lands in any local area, estate or tenure or part thereof—

(a) the rents of such non-agricultural lands shall not be settled under Part II of Chapter X of the said Act ; and

(ii) apportion the existing rent between the tenancies so constituted ; and

(iii) estimate fair and equitable rent for the non-agricultural lands in accordance with the provisions of this Act.

31. Publication of settlement rent-roll bearing of objections and confirmation.—(1) When an order has been made under section 29 for the preparation of a settlement rent-roll the Revenue-officer shall prepare such rent-roll in accordance with the provisions of this Chapter and shall cause a draft of it to be published in the prescribed manner and for the prescribed period and shall receive and consider any objections made in regard to any entry therein or omission therefrom during the period of publication and shall dispose of such objections according to such rules as the Provincial Government may make.

(2) The Revenue-officer may of his own motion or on the application of any part aggrieved, at any time before a settlement rent-roll is submited to the confirming authority under section 32. revise any entry therein.

Provided that no such entry shall be revised until reasonable notice has been given to the parties concerned to appear and be heard in the matter,

—S. 64

land comprised in the tenancy, which is suitable to such land and consistent with any of the purposes specified in section 4 for which it is being used and which, if not executed on such land, is either

32. Final revision of settlement rent-roll and its confirmation by prescribed Revenue authority.—(1) When all objections have been disposed of under section 31, the Revenue officer shall submit the settlement rent-roll to the prescribed Revenue authority for confirmation with full statement of the grounds for his proposals and a summary of the objections (if any) which he has received.

(2) Such authority may confirm the settlement rent-roll with or without amendment or may return it for revision :

Provided that no entry shall be amended or omission supplied until reasonable notice has been given to the parties concerned to appear and be heard in the matter :

(3) After confirmation by such authority the Revenue-officer shall cause the date of confirmation to be published in the prescribed manner and thereafter the settlement rent-roll shall be open to inspection at such place and times as may be prescribed.

33. Appeals.—(1) Any person who is aggrieved by any entry in or omission from a settlement rent-roll confirmed under section 32 may appeal to the prescribed Revenue authority and from the decision of such authority to the Board of revenue in the manner and within the period prescribed in this behalf.

(2) No Civil Court shall annul or alter any decision of a Revenue-officer, a Revenue authority or the Board of Revenue under section 30 or section 31 or section 32 or sub-section (1) of this section except as provided in section 34.

34. Suits.—(1) Any person who is aggrieved by any entry in or omission from a settlement rent-roll confirmed under section 32 may institute a suit in the Civil Court which would have jurisdiction to entertain a suit for the possession of the land to which the entry relates or in respect of which the omission was made.

(2) Such suit shall be instituted within six months from the date of confirmation of the settlement rent-roll or from the date of the certificate of final publication of the record-of-rights, whichever is later, or if an appeal has been presented under section 33 within three months from the date of the disposal of such appeal.

—S. 64

executed directly for its benefit, or is, after execution, made directly beneficial to it, and subject to the foregoing provisions, shall include the following, namely :—

(3) Such suit may be instituted on any of the following grounds and on no other ground, namely :—

(a) that the land is not liable to the payment of rent ;

(b) that the land although entered in the record-of-rights as being held rent-free is liable to the payment of rent ;

(c) that the relation of landlord and tenant does not exist ;

(d) that in the record-of-rights the land has been wrongly recorded as part of a particular estate or tenancy or wrongly omitted from the lands of any estate or tenancy;

(e) that in the record of rights there has been any omission of an under-tenant or such under tenant has been wrongly recorded as holding the land rent free;

(f) that in the record-of-rights the special conditions and incident of the tenancy have not been recorded or have been wrongly recorded;

(g) that in the record-of-rights any right of way or other easement attached to the land has not been recorded or has been wrongly recorded;

(h) that the land has been wrongly recorded in the settlement rent-roll as non-agricultural land; and

(i) that there has been an omission to estimate fair and equitable rents in respect of any land under this Act.

(4) When a Civil Court has passed final orders or a decree under this section it shall notify the same to the Collector.

35. Notification of order under section 27 or 29 to be conclusive evidence.—A notification in the *Official Gazette* of an order under section 27 or an order under section 29 shall be conclusive evidence that the order has been duly made.

36. Presumption of rents settled under sections 30 to 33.—Subject to the provisions of section 34 all rents entered in a settlement rent-roll confirmed under section 32 or settled under section 33 shall be deemed to have been correctly settled and to be fair and equitable rents within the meaning of this Act.

37. Correction of settlement rent-roll. —The Revenue-officer may at any time correct any *bona fide* clerical mistake in or omission from the settlement rent-roll and shall make such alterations in the same as may be necessary to give effect to any decision under sub-section (1) of section 33 or section 34.

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(a) laying out of passages or roads,
(b) providing open spaces for ventilation,
(c) providing facilities for taking water,
(d) laying out drainage connections,

38. Settlement of rents in respect of non-agricultural lands by Revenue-officers in the case where a settlement of land revenue is not being or is not about to be made.—Where an order has been made under section 27 for the preparation of a record-of-rights in respect of all non-agricultural lands in any local area, estate or tenure or part thereof of which a settlement of land revenue is not being made or is not about to be made, the Revenue officer shall, in settling the rent of such non-agricultural lands under sections 105 and 105A of the Bengal Tenancy Act, 1885, (VIII of 1885) have regard to the provisions of this Act as to the detemination of a fair and equitable rent and to such rules as may be made in this behalf under this Act.

39. Stay of proceedings in Civil Court during preparation of record-of-rights under section 27.—When an order has been made under section 27 directing the preparation of a record-of-rights, then subject to the provisions of section 34, a Civil Court shall not.—

(a) where a settlement of land revenue is being or is about to be made—until after the final publication of the record-of-rights, and

(b) where a settlement of land revenue is not being made or is not about to be made—until four months after the final publication of the record-of-rights.

entertain any suit or application for the alteration of the rent or the determination of the status of any non-agricultural tenant in the area to which the record-of-rights applies:

40. Date from which settled rents take effect.—When a rent is settled by a Revenue-officer under this Charter or under Chapter X of the Bengal Tenancy Act, 1885 (VIII of 1885) after an order under section 27 has been made, such rent shall take effect from such date as may be fixed by the Revenue-officer.

41. Period for which rents as settled are to remain unaltered.—(1) When the rent of the non-agricultural land comprised in tenancy is settled under this Chapter or under Chapter X of the Bengal Tenancy Act, 1885 (VIII of 1885) after an order under section 27 has been made, it shall not except on the ground of a landlord's improvement or of a subsequent alteration in the area of such land, be enhanced, in the case where such land is held by a tenant or by an under-tenant having under section 22 the rights and liabilities of a tenant, for fifteen years, and in the case where such land is held by an under-tenant having no such right and liabilities for five years; and no such rent shall be reduced within the period afore-said save on the ground of alteration in the area of the non-agricultural land comprised within the tenancy.

—S. 64

but shall not include any work executed by a non-agricultural tenant if it substantially diminishes the value of his landlord's property.

(2) The said period of fifteen years and five years shall be counted from the date on which the rent settled takes effect under this Chapter.

42. Interpretation.—In this Chapter—

(a) "Revenue-officer" includes any officer whom the Provincial Government may appoint to discharge all or any of the functions of a Revenue officer under that Chapter;

(b) term "settlement of land-revenue" includes a settlement of rent in an estate or tenure which belongs to the State.

CHAPTER VII

General provisions as to rent of non-agricultural tenancies.

Payment of rent

43. Rent to be paid yearly.—Subject to agreement a money rent payable by a non-agricultural tenant shall be paid yearly according to the Bengali year and shall fall due on the last day of the Bengali year in respect of which it is paid.

44. Time and place for payment of rent—(1) Every non-agricultural tenant shall pay or tender the yearly rent before sunset of the day on which it falls due;

Provided that the non-agricultural tenant may pay or tender the rent payable for the year at any time during the year before it falls due.

(2) The payment or tender of rent may be made—

(i) at the landlord's local office or at such other convenient place as may be appointed in that behalf by the landlord; or

(ii) by postal money order in the manner prescribed.

A tender may also be made by depositing the rent in Court in accordance with the provisions of section 51.

(3) Where rent is sent by postal money order in the manner prescribed the Court may presume until the contrary is proved that a tender has been made.

(4) When a landlord accepts rent sent by postal money order, the fact of this acceptance shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the postal money order form.

(5) Any yearly rent or part of any yearly rent not duly paid at or before the time when it falls due shall be deemed to be an arrear.

45. Appropriation of payments.—(1) When a non-agricultural tenant makes a payment on account of rent, he may declare the year or years in respect of which he wishes the payment to be credited, and the payment shall be credited accordingly.

—S. 64

Sec. 64.

The principle underlying the section is that any work whether upon or outside the land comprised in the tenancy which (1) adds to its value, (2) is suitable to the land (3) and is consistent with the purpose for which it was let is an improvement. See Harimohan Misra V. Surendra Narayan Singh, 31 Cal. 301 on appeal, Harimohan Misra V. Surendra Narayan Singh, 34 Cal. 718 P.C. From this it will be seen that no exhaustive definition of what are improvements can be given.

(2) If he does not make any such declaration, the payment may be credited to the account of such year or years as the landlord thinks fit.

Receipts and Accounts

46. Non-agricultural tenant making payment to his landlord entitled to a receipt.—(1) Every non-agricultural tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith a written receipt for such payment either from such landlord, or where the agent of such landlord has been authorised in writing by such landlord to issue and sign such receipts on behalf of such landlord, from such agent.

(2) The landlord or such agent, as the case may be, shall prepare and retain a counterfoil of the receipt.

(3) The receipt and counterfoil shall be in such form and shall specify such particulars as may be prescribed either generally or for any particular local area or class of cases.

(4) If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

47. Non-agricultural tenant entitled to full discharge or statement of account at close of year.—(1) Where a landlord admits that all rent payable by a non-agricultural tenant to the end of the Bengali year has been paid, the non-agricultural tenant shall be entitled to receive free of charge within three months after the end of the year, a receipt in full discharge of all rent falling due to the end of the year either from the landlord or, where the agent of such landlord has been authorised in writing to issue and sign such receipts on behalf of such landlord, from such agent.

(2) Where the landlord does not so admit, the non-agricultural tenant shall be entitled on paying a fee of four annas, to receive within three months after the end of the year, a statement of account in such form and specifying such particulars as may be prescribed either generally or for any particular local area or class of cases.

(3) The landlord or such agent, as the case may be, shall prepare and retain a copy of the Statement containing similar particulars.

—S. 64

An improvement is usually executed on the lands of the tenancy. But a work executed elsewhere e. g., a sluice gate to which a drain serving the land in question is connected will be an improvement as being directly beneficial to it. See Raja Kamala Ranjan Roy Vs. Abdul Gaffar, 45 C.W.N. 464.

48. Penalties and fine for withholding receipts and statements of account and failing to keep counterfoils.—(1) If a landlord or his agent without reasonable cause refuses or neglects to deliver to a non-agricultural tenant a receipt in accordance with provisions of section 46 for any rent paid by the non-agricultural tenant, such tenant may, within three months from the date of payment, institute a suit to recover from such landlord or agent, as the case may be, such penalty, not exceeding double the amount or value of that rent, as the Court thinks fit.

(2) If a landlord or his agent without reasonable cause refuses or neglects to deliver to a non-agricultural tenant demanding the same either the receipt in full discharge or, if the non-agricultural tenant is not entitled to such a receipt, the statement of account for any year required by section 47, such tenant may, within the next ensuing Bengali year, institute a suit to recover from such landlord or agent, as the case may be, such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by such tenant to the landlord during the year for which the receipt or account should have been delivered.

(3) If a landlord or his agent without reasonable cause, fails to deliver to the non-agricultural tenant a receipt or statement or to prepare and retain a counterfoil or copy of a receipt or statement, as required by either of the said sections, such landlord or agent, as the case may be, shall be liable to a fine not exceeding fifty rupees, to be imposed, after summary inquiry, by the Collector.

(4) The Collector may hold a summary inquiry under sub-section (3), either on information received from a Revenue-officer within one year, or upon complaint of the party aggrieved made within three months, from the date of failure, or upon the report of a Civil Court.

(5) Where, in any case instituted under sub-section (3), the Collector discharges any landlord or agent, and is satisfied that the complaint of the non-agricultural tenant on which the proceedings were instituted is false or vexatious, the Collector may, in his discretion, by his order of discharge, direct the non-agricultural tenant to pay to such lanlord or agent such compensation not exceeding fifty rupees as the Collector thinks fit.

(6) An appeal shall lie to the Commissioner of the Division against any order of the Collector imposing a fine under sub-section (3) or awarding compensation under sub-section (5); and the order passed by the Conmissioner on such appeal shall, subject to any order which may be passed on revision by the Board of Revenue, be final.

—S. 64

Unlike Sec. 76 B. T. Act there is no presumption raised by this section as to what are improvements ; only four categories of work are mentioned as included in the term.

Who can execute work of improvement, from sections 65, 66 and 68 it is clear that both the landlord and the tenant can make improvements.

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(7) Any fine imposed or compensation awarded under this section may be recovered in the mannner provided by any law for the time being in force for the recovery of a public demand.

(8) For the purpose of an inquiry under this section the Collector shall have power to summon and enforce the attendance of witnesses, and compel the production of documents in the same manner as is provided in the case of a Court under the Code of Civil Procedure 1908 (Act V of 1908).

(9) The existence of a dispute as to the rent or area of a tenancy on account of which rent is paid shall not be deemed to be a reasonable cause for refusing, neglecting or otherwise failing to deliver—

(a) a receipt for any amount actually paid on account of rent or

(b) the statement of account required by section 47 and the refusal of the non-agricultural tenant to accept the receipt shall not be deemed to be a reasonable cause for failing to prepare and retain a counterfoil of such receipt as required by section 46.

49. Provincial Government to prepare forms of receipt and account.—(1) The Government shall cause to be prepared and kept for sale to landlord at all sub-divisional offices form of receipts with counterfoils and of statements of account suitable for use under sections 46 and 47.

(2) The forms may be sold in books with the leaves consecutively numbered or otherwise as the Government thinks fit.

50. Effect of receipt by registered proprietor, manager or mortgagee.—Where rent is due to the proprietor manager or mortgagee of an estate the receipt of the person registered under the Land Registration Act 1876, (Bengal Act VII of 1876.) as proprietor, manager or mortgagee of that estate or of his agent authorised in that behalf shall be a sufficient discharge for the rent ; and the non-agricultural tenant liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person :

Provided that nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee.

Deposit of rent.

51. Application to deposit rent in Court.—(1) Inf any o the following cases, namely:—

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Under the B.T. Act, dwelling house is expressly mentioned as an improvement, under the present Act, whether it is an improvement or not will depend on whether three tests laid down are satisfied. See Ismail Khan Mahmud V. Kali Krishna Mandal, 6 CWN X 143 ; Akhoy Kumar Shah V. Kamini Kumar Shah,

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(a) when a non-agricultural tenant tenders money on account of rent and the landlord refuses to receive it or refuses to grant a receipt for it ;

(b) when a non-agricultural tenant bound to pay money on account of rent has reason to believe owing to a tender having been refused or a receipt withheld on a previous occasion that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it ;

(c) when the rent is payable to co-sharers jointly and the non-agricultural tenant is unable to obtain the joint receipt of the co-sharers for the money and no person has been empowered to receive the rent on their behalf ; or

(d) When the non-agricultural tenant entertains a *bona fide* doubt as to who is entitled to receive the rent ;

the non-agricultural tenant may present to the Court having jurisdiction to entertain a suit for the rent of his tenancy an application in writing for permission to deposit in the Court a sum not less than the amount of the money then due.

(2) The application shall—

(a) contain a statement of the grounds on which is made ;

(b) state—

(i) in the cases referred to in clauses (a) and (b) of sub-section (1) the name of the person to whose credit the deposit is to be entered;

(ii) in the case referred to in clause (c) of that sub-section the names of the co-sharers to whom the rent is due, or of so many of them as the non-agricultural tenant may be able to specify; and

(iii) in the case referred to in clause (d) of that sub-section, the names of the persons to whom the rent was last paid and of the person or persons now claiming it;

(c) be signed and verified in the manner provided in sub-rules (2) and (3) of rule 15 of Order VI in Schedule I to the Code of Civil Procedure, 1908, (Act V of 1908.) by the non-agricultural tenant or where he is not personally cognizant of the facts of the case by some person so cognizant; and

(d) be accompanied, in the cases referred to in clauses (a) and (b) of sub-section (1) by the prescribed cost of transmission of the money deposited to the landlord and in the cases referred to in clauses (c) and (d) of that sub-section by a fee of the prescribed amount.

52. Receipt granted by Court for rent deposited to be a valid acquittance.— (1) If it appears to the Court to which an application is made under

—S. 64

39 CWN 422, "diminishing the value of landlord's property"—See Patinam Bibi V. Saikh Reasuf. 19 C.W.N. 1197 ; Kadambini V. Nabin Chandra, 2 W.R. 157 ; Bhupendra Nath V. Elokeshi. A.I.R. 1986 Cal. 318.

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section 51 that the applicant is entitled under that section to deposit the rent it shall receive the rent and give a receipt for it under the seal of the Court.

(2) A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the non-agricultural tenant and deposited as aforesaid in the same manner and to the same extent as if the amount of rent had been received—

(a) in the cases referred to in clauses (a) and (b) of sub-section (1) of section 51 by the person specified in the application as the person to whose credit the deposit was to be entered ;

(b) in the case referred to in clause (c) of that sub-section, by the co-sharers to whom the rent is due ; and

(c) in the case referred to in clause (d) of that sub-section, by the person entitled to the rent.

53. Procedure for payment to the landlord of rent deposited.—The Court receiving a deposit—

(i) in the case referred to in clause (a) or in clause (b) of sub-section (1) of section 51 shall forthwith forward the same by postal money order to the address of the landlord, and

(ii) in the case referred to in clause (c) or in clause (d) of that sub-section shall forthwith cause to be affixed in a conspicuous place at the Court-house a notification of the receipt thereof containing a statement of all material particulars, and if the amount of the deposit is not paid away under section 54 within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith in the case referred to in clause (c) of that sub-section cause a notice of the receipt of the deposit to be posted free of charge at the landlord's local office, if any, and in some conspicuous place in the village or town in which the non-agricultural land comprised within the tenancy or any portion thereof is situated, and in the case referred to in clause (d) of that sub-section cause a like notice to be served free of charge on every person who it has reason to believe claims, or is entitled to, the deposit.

54. Payment of refund of deposit.—(1) The Court may pay the amount of the deposit notified under section 53 to any person appearing to it to be entitled to the same, or may, if it thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

(2) If no payment is made under clause (i) of section 53 or under sub-section (1) before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the Court with which the rent was deposited.

—S. 65

65. RIGHTS TO MAKE IMPROVEMENTS.—(1) Subject to the provisions of sub-section (2), neither the non-agricultural tenant

(3) No suit or other proceeding shall be instituted against the Provincial Government or against any officer of the Provincial Government in respect of anything done by a Court receiving deposit under section 52 but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

Penalty for refusing to receive rent.

55. Penalty for refusing to receive rent tendered by postal money order or deposited.—If a landlord or his agent refuses without reasonable cause to receive payment of rent remitted by postal money-order or deposited in Court the landlord shall be precluded from recovering, by suit, interest, costs or damages in respect of the same and the Court may in addition award to the non-agricultural tenant demages not exceeding twelve and a half per centum on the whole amount claimed by the plaintiff.

The plea of the existence of any dispute as to the amount of rent of or the area of the land comprised in the tenancy shall not be deemed to be a reasonable cause under this section;

Provided that, when a landlord accepts rent, which has been deposited or remitted by postal money-order, the fact of his acceptance shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the application for permission to deposit or in the postal money-order form.

Arrears of rent.

56. Liability to sale for arrears.—A non-agricultural tenant shall not be liable to ejectment for arrears of rent, but his tenancy shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.

57. Interest on arrears.—(1) An arrear of rent shall bear simple interest at the rate of six and a quarter *per centum per annum* from the expiration of the Bengali year in which the rent falls due to the date of payment or of the institution of the suit, whichever date is earlier.

(2) Nothing in any contract between a landlord and a non-agricultural tenant made before or after the commencement of this Act shall affect the provisions of sub-section (1) relating to interest payable on arrears of rent.

58. Power to award damages on rent withheld without reasonable cause or to defendant improperly sued for rent.—(1) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twelve and a half *per centum* on the amount of rent decreed. as it thinks fit ;

—S. 65

nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the tenancy.

Provided that interest shall not be decreed when damages are awarded under this section :

Provided also that where damages are awarded—

(i) the amount of such damages shall not be less than the interest accruing up to the date of the institution of the suit, and

(ii) interest on the arear may be awarded from the date of the institution of the suit up to the date of payment at such rate as the Court directs.

(2) If, in any suit brought for recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable cause, ihe Court may award to the defendant by way of damages, such sum, not exceeding twelve and a half *per centum* on the whole amount claimed by the plaintiff, as it thinks fit.

58A. Recovery of arrears of rent.—(1) Notwithstanding anything contained in any other provisions of this Act or in any othar law for the time being in force or in any contract the landlord shall be entitled to recover arrears of rent from the non-agricultural tenant from the year 1940 until the commencement of the Act, provided the suit be instituted for the recovery of the same within a year from the commencement of the Act.

(2) The Court shall have the right to grant instalments for payment the period of which shall in no case exceed 5 years.

59. Non-agricultural tenant not liable to transferee of landlord's interest for rent paid to former landlord without notice of the transfer.—(1) A non-agricultural tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which become due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee has before the payment given notice in writing of the transfer to the non-agricultural tenant.

(2) Where there is more than one non-agricultural tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the non-agricultural tenants published in the prescribed manner shall be a sufficient notice for the purposes of this section.

60. Liability for rent before transfer of tenancies.—When a non-agricultural tenant transfers his tenancy in whole or in part, the transferor and transferee shall be jointly and severally liable to the landlord for arrears of rent due before the transfer :

Provided that the transferor shall not be liable to the landlord for such arrears of rent if the transferee has agreed to pay such arrears to the landlord and the fact has been mentioned in the instrument of transfer.

Illegal imposition

61. Abwab, etc. illegal.—All impositions upon non-agricultural tenants under the denomination of abwab, mathat, or other like appellations, in addition to the actual rent, shall be illegal, and all stipulations and reservation for the payment of such impositions shall be void.

—Ss. 65-66

(2) If both the non-agricultural tenant and his landlord wish to make the same improvement the non-agricultural tenant shall have the prior right to make it, unless it affects another tenancy or other tenancies under the same landlord.

[1][* * * * * *]

Sec. 65—deals with the respective rights of the landlord and tenant to make improvements.

Where both desire to make the improvement, the tenant is given the prior right, unless the work is one of general utility affecting a large number of tenants. See sub-section (2). No one party can prevent the other from making improvement, Sub-section (i) (Jogesh Chandra V. Hem Chandra, A.I.R. 1936 Cal. 243).

Any fee realized from the tenant by the landlord making an improvement is made illegal and the same consequences follow as for realization of abwab.

66. COLLECTOR TO DECIDE QUESTION AS TO RIGHT TO MAKE IMPROVEMENT, ETC.—(1) If a question arises between the non-agricultural tenant and his landlord—

62. Fine for realisation of abwab. etc.—(1) If a landlord or his agent realises from a non-agricultural tenant any imposition declared under section 61 to be illegal such landlord or agent, as the case may be, shall be liable in the same manner, as in sub-sections (4),(7) and (8) of the said section relating to inquiry, fine and procedure shall, *mutatis mutandis* and so far as may be, apply to proceedings under this section.

(2) An appeal shall lie to the District Judge against an order imposing a fine under this section and the order passed by the District Judge on such appeal shall be final.

(3) The imposition of a fine on a landlord or landlord's agent under this section shall not operate as a bar to the institution of a suit under section 63.

63. Penalty for exaction by landlord from non-agricultural tenant of sum in excess of the rent payable.—Every non-agricultural tenant from whom, except under any special enactment for the time being in force, any sum of money is exacted by his landlord in excess of the rent or interest lawfully payable may within six months from the date of the exaction institute a suit to recover from the landlord, in addition to the amount so exacted, such sum by way of penalty as the Court thinks fit, not exceeding two hundred rupees ; or, when double the amount so exacted exceeds two hundred rupees, not exceeding double that amount."

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1. Omitted by E.P. Ord. IX of 1967. Omitted sub-sec. (3) ran as follows :—

"(3) Any fee realised from non-agricultural tenant for permission to make any improvement in respect of his tenancy shall be deemed to be an abwab and the provisions of section 61 shall apply thereto."

—Ss. 66—68

(a) as to the right to make an improvement, or

(b) as to whether a particular work is an improvement,

the [1][Dy. Commissioner] may on the application of either party decide the question.

(2) An appeal, if presented within thirty days from the date of the order appealed against shall lie to the [2][Commissioner of Division] from every order passed by the [1][Dy. Commissioner] under sub-section (1) and the order passed by the [2][Commissioner of Division] on such appeal shall be final.

[3][* * * * * *]

68. APPLICATION TO RECORD EVIDENCE AS TO IMPROVEMENT.—(1) If any non-agricultural tenant holding any non-agricultural land [4][*] desires that evidence relating to any improvement made in respect thereof be recorded he may apply to the [5][prescribed] Revenue-officer [6][* *] and such Revenue-officer shall thereupon, at a time and place of which notice shall be given to the parties record the evidence:

Provided that such Revenue-officer shall not so record the evidence if he considers that there were no reasonable grounds for the making of the application, or if it appears to him that the subject-matter thereof is under inquiry in a Civil Court.

1. Subs. by E.P. Ord. IX of 1967.
2. ,, ,, Ibid
3. Omitted, Ibid. Omitted section ran as follows :

"67. Registration of landlord's improvements.—(1) A landlord may, by application to such Revenue-officer as the Provincial Government may appoint in this behalf, register any improvement which he has lawfully made or which has been lawfully made wholly or partly at his expense or which he has assisted a non-agricultural tenant in making.

(2) Every such application shall be in the prescribed form and shall contain such particulars and shall be verified in such manner, by local enquiry or otherwise, as may be prescribed.

(3) The Revenue-officer receiving the application may reject it if it has not been made within twelve months,—

(a) in the case of improvements made before the commencement of this Act, from the commencement of this Act ; and

(b) in the case of improvements made after the commencement of this Act, from the date of the completion of the work."

4. The word "or his landlord" omitted, Ibid.
5. Ins. Ibid.
6. The word "to whom an application for the registration of such improvement may be made under sub-section (1) of section 67," omitted. Ibid.

—Ss. 69-70

(2) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in every subsequent proceeding between the landlord and the non-agricultural tenant or any persons claiming under them.

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CHAPTER IX

Other incidents of non-agricultural tenancies.

[1][* * *]

70. No ejectment except in execution of decree.—No Non-agricultural tenant shall be ejected from the tenancy or from any non-agricultural land which he holds except in execution of a decree of a competent Civil Court.

Sec. 70.

No non-agricultural tenant is to be ejected except in execution of a decree. Sec. 89 of the B.T. Act is the corresponding section.

The effect of this section is to limit the landlord to grounds of ejectment laid down in the Act.

Contracts in leases whereby landlord is given the right to eject without recourse to law are made inoperative, (Buddimanta Paramanick V. Sarat Chandra, 13 CLJ, 672).

Partial ejectment :—There can be no partial ejectment i. e., eviction from a part, and tenancy for the remaining part, (Rani Lalita Sundari V. Rani Swarnamayee, 5 CWN 353 ; Harihar v. Ramshashi, 23 CWN 77 PC).

Sub-tenancies : Sub-tenants are not ejectable by the superior landlord, even when there sub-tenancies are not binding, (Tamjaddi v. Asgar Howladar, 13 CWN 183). See Surendra Naran V. Notan Behari. 35 CWN 114. A decree for ejectment against tenant binds sub-tenants. Service tenures were held to

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1. Omitted by E.P. Ord. IX of 1967. Omitted section ran as follows :

"69. Eviction of non-agricultural tenants holding tenancies conditional upon employment in industrial concern.—Where a tenancy is held by a non-agricultural tenant subject to the condition of employment in any industrial concern, such tenant shall, notwithstanding anything elsewhere contained in this Act, be liable to be ejected from the land comprised in such tenancy on the termination of such employment."

—Ss. 70, 71

be outside the scope of section 89 BT Act, (Makbul Hossain v. Amin Saikh, 25 Cal. 131).

Remedy for illegal ejectment is a possessory suit under sec. 9, Specific Relief Act. Ejectment from a portion, where the rent is not distributable, leads to suspensions of rent even for the portion in the tenant's possession, (Katyayani Debi V. Udoy Kumar Das, 30 CWN. IPC)

Unless there is a court decree there can be no ejectment, (Shakhisona Dasi v, Gourhari Jana, 56 CWN 174).

71. APPLICATION OF THE TRANSFER OF PROPERTY ACT, 1882, OR OTHER LAW.—**The provisions of the Transfer of Property Act 1882, (IV of 1882) and of any other law for the time being in force insofar as they may be applicable and insofar as they are not inconsistent with the provisions of this Act shall continue to apply to all tenancies to which the provisions of this Act apply.**

Sec. 71

The continuance of the application of the T. P. Act and other Acts insofar as they are not abrogated by this Act, and are not inconsistent with its provisions, is provided for.

Prior to this Act it was the T,P. Act which governed non-agricultural tenancies, (Radhanath Maity v. Krishna Chandra Mukherjee, 40 CWN 722; Amulya Chandra Roy V. Kumar Pashupail Malia, 55 CWN 389 FB at 394, 1st Col.; Abdus Samad V. Jitoo Chowdhury, 54 CWN 149; Hedayet V. Kamalanand, 17 CLJ 441).

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[1] [* * * * *]

1. Chapter X omitted by E. P. Ord. IX of 1967. The sections of the omitted chapter ran as follows :—

"Chapter X

Conversion of agricultural lands into non-agricultural tenancies.

72. Conversion of agricultural lands into non-agricultural tenancies in certain cases.—(1) A tenant holding any land not being non-agricultural land which is situated within any area to which this Act extends the landlord may apply to the Collector for the conversion of such land into a tenancy to which the provisions of this Act apply and on receipt of such application the Collector shall, by order in writing, direct such conversion subject to payment of such rent not exceeding twice the rent for the time being payable for such land, as the Collector may fix.

Provided that no landlord shall be entitled to apply under this sub-section except in the case where such land is being used by the tenant by

CHAPTER XI.

Judicial Procedure

[1] [* * * * * *]

75. RELIEF AGAINST FORFEITURES IN CERTAIN CASES.—A suit for the ejectment of a non-agricultural tenant, on the ground that

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whom it is held for any purpose not connected with agriculture or horticulture without the express or implied consent of the landlord :

Provided further that no order under this sub-section shall be passed without notice, the prescribed process fee for which shall accompany the application.—

(i) in the case where such application is made by a tenant to the landlord or the entire body of landlords and to the co-sharer tenants, if any, and

(ii) in the case where such application is made by a landlord, to the co-sharer landlords, if any, and to the tenant or if there be more than one tenant to all such tenants.

(2) Every order passed under sub-section (1) directing the conversion of any land which is not non-agricultural land into a tenancy to which the provisions of this Act apply shall state the date from which such conversion shall have effect and shall specify the rent which shall be payable in respect of the tenancy into which such land is converted and the rent so specified shall not be enhanced during a period of not less than fifteen years from the date of such order.

(3) An appeal shall lie to the Commissoner of the Division from any order of the Collector under this section if it is presented within thirty days from the date of such order and is accompanied by the prescribed fee and the decision of the Commissioner on such appeal shall be final.

(4) Notwithstanding anything contained in any other law for the time being in force or in any contract, where any land which is not non-agricultural land is converted into a tenancy to which the provisions of the Act apply by an order under this section such land shall with effect from the date on which such conversion takes effect become non-agricultural land and the non-agricultural tenant of such land shall for the purposes of this Act be deemed to have held it as such a tenancy with effect from the date on which such tenant or his predecessor-in-interest was first inducted into the land :

Provided that if such tenant acquired a right of occupancy in such land under the provisions of the Bengal Tenancy Act, 1885 (VIII of 1885.) or the Sylhet Tenancy Act, 1936 (Assam Act XI of 1936.) before such conversion, the tenancy comprising such land after such conversion shall, notwithstanding anything comprising such land after such conversion shall, notwithstanding anything contained elsewhere in this Act, be deemed to be a tenancy to which the provisions of section 7 apply."

1. Secs. 73 & 74 omitted by E. P. Ord IX of 1967. Omitted section ran as follows :

"73. Regard to be had by Civil Courts to entries in record-of-rights.—In all areas for which a record-of-rights has been prepared in pursuance of an order made under section 27 and finally published, a Civil Court shall, in all suits between landlord and non-agricultural tenant as such, have regard to the entries in such record-of-rights relating to the subject matter in dispute which may be produced before it, unless such entries have been proved by evidence to be incorrect ; and when a Civil Court passes a decree at variance with such entries, it shall record its reasons for so doing.

—S. 75

he has used the non-agricultural land in a manner which renders it unfit for use for any of the purposes specified in section 4, shall not be entertained unless the landlord has served in the prescribed manner, a notice in writing on the non-agricultural tenant—

(i) specifying the particular misuse complained of and
(ii) if the misuse is capable of remedy, requiring the tenant to remedy the same,

and the tenant has, where the misuse is capable of remedy, failed within a reasonable time from the date of the service of the notice to remedy the misuse :

Sec. 75 provides for a notice being given to the tenant to remedy the misuse of the land by the tenant, before a suit for ejectment can be brought.

This corresponds to section 155 B T Act. Sub-sections (2), (3) and (4) of section 155 are not however reproduced in the present section.

The intention of the law seems to be that in case of the tenant making amends there shall be no ejectment and that the tenant should be given an opportunity to do so. See Swarnamyee Debya v. Aotujuddi, 36 CWN 819 which lays down that without notice a suit for ejectment does not lie.

Under sec. 155, B T Act the court can decree suitable compensation, (Md. Yunus V Kamala Singh, AIR 1930 Pat 624).

Clause (ii) :—'Capable of remedy' does not mean capable of remedy by award of compensation, (Harak Singh V. Kiratnarayan Singh, 10 CLJ 595).

In case of misuse, which really is an improvement, only nominal damages are allowed, (Krishnadas Roy v. Mohendra Chandra Sil, 25 CWN 930).

In order to pass a decree for ejectment it has to be found that the act complained of has rendered the land unfit. Cf. the cognate provision in T. P. Act. Sec III, of giving notice of forfeiture.

—Limitation: Notice must be served within one year from the date of breach in Bengal Tenancy Act cases. See Art. I, Schedule III, B.T. Act. There is no special limitation provided by this Act. The suit on the ground of misuse or conversion can be brought within 2 years, See Art 32, Schedule I, Limitation Act, (Takir Mondal V. Torafdi Ghrami, 28 CWN 661). Suit for ejectment and

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74. Execution of decrees for arrears of rent by assignees of such decrees. —Notwithstanding anything contained in rule 16 of Order XXI in Schedule I to the Code of Civil Procedure, 1908 (Act V of 1908) an application for the execution of a decree for arrears in respect of any non-agricultural land obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the non-agricultural land has become and is vested in him."

—Ss. 75, 77

damages is governed by Art. 32, (Krishnadas Roy V. Mohendra Chandra Sil 25 CWN 930).

Notice—What it should contain—amount of compensation need not be mentioned, (Mollah Abdul Aziz v. Saikh Abdul Sabur, 54 CWN 958)—not requiring tenant to remedy misuse bad, (Shib Chandra v. Bepinbehary, 27 CWN 144).

Section is applicable to a suit against a transferee who, the landlord says, has acquired no title, the sale being against covenant is lease, (Rajani Kanta Kapali V. Kali Mohan Das, 21 CWN 117).

Notice requiring tenant to quit and also to pay compensation not valid, (Kali Chandra Chakravarty V. Kali Kumar Mazumdar, 23 CWN 569).

Decree for ejectment for failure to compensate, can be executed only for ejectment, (Karim V. Aswini Kumar, 25 CWN 658 ; Kiran Chandra Ghosh V. Hamid Khan, 33 CWN 1224).

Time—not mentioned in appellate judgement, time given by lower Court to be computed from appellare judgement, (Kiran V, Aswini Kumar, 25 CWN 658).

[1][* * * * *]

77. DELIVERY OF POSSESSION OF LAND SOLD FOR ARREARS OF RENT WHICH HAS ANY STRUCTURE ERECTED ON IT BY A NON-AGRICULTURAL TENANT.—Where a non-agricultural tenant or his predecessor-in-interest has erected any structure on any non-agricultural land held by such tenant and such land is sold in execution [2][* *] of a certificate signed under the Public Demands Recovery Act, 1913, (Act III of 1913) for arrears of rent due in respect of such land, the purchaser shall be entitled to obtain delivery of posse ssion of the land sold by the removal of such structure:

1. Omitted by E. P. Ord. IX of 1967. Omitted sec. 76 ran as follows :—

"76. Protection of the interest of an under-tenant having the rights and liabilities of tenant in case of sale for arrears of rent.—Where the interest of a non-agricultural tenant in any non-agricultural land is sold in execution of a decree or of a certificate signed under the Bengal Public Demands Recovery Act, 1913, (Bengal Act III of 1913), for arrears of rent due in respect of such land, the purchaser shall take free from all encumbrances which may have been created by such non-agricultural tenant or his predecessor-in-interest and is subsisting immediately before the purchase takes effect, but subject to the interest of any under-tenant having under section 22 the rights and liabilities of a tenant."

2. The word "of a decree or" omitted, Ibid.

Provided that the judgement-debtor shall be allowed reasonable time by the Court to remove such structure from the property sold before the possession of such property is delivered to the purchaser :

Provided further that it shall be open to the purchaser to obtain possession of such land together with snch structure on payment of such compensation for the value of such structure to the judgement-debtor as may be agreed upon between the purchaser and the judgement-debtor or, in the case where they do not agree, as may be determined by the Court on application by the purchaser, and, on payment of such compensation, the interest of the judgment-debtor in such structure shall vest absolutely in the purchaser.

Sec. 77.

Relates to delivery of possession of land sold in execution of a decree for rent or certificate for rent, where there are tenant's structures.

The purchaser has the right to get vacant possession by removal of structures. But if he wants possession of land together with structures he is to pay compensation agreed upon between him and the judgment-debtor, or fixed by the court. On payment of such compensation the interest of judgment-debtor in the structures shall cease.

In this connection See Maharaja Bir Bikram Kishore Manikya V. Rajkumar Pal, 38 CWN 1051, where it is laid down that on purchase of land with structures thereon, which have not been sold, the purchaser is entitled to the structures, he may keep them or demolish them.

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1. Secs. 78 to 84 omitted by E.P. Ord. IX of 1967. The omitted sections ran as follows :—

"78. Purchase of non-agricultural tenancy in execution of a decree for arrears of rent to take effect from the date of confirmation of the sale.—Notwithstanding anything contained in the Code of Civil Procedure, 1908, (Act V of 1908), whenever the interest of any non-agricultural tenant in any non-agricultural land is sold in execution of a decree for arrears of rent and the sale is confirmed, the purchase shall take effect from the date of confirmation of the sale.

79. Rules for disposal of sale-proceeds.—(1) In disposing of the proceeds of a sale of the interest of a non-agricultural tenant in any non-agricultural land in execution of a decree for arrears of rent the following rules instead of those contained in section 73 of the Code of Civil Procedure, 1908 (Act V of 1908), shall be observed, that is to say—

(a) there shall first be paid to the decree-holder the costs incurred by him in bringing the tenancy to sale ;

CHAPTER XII

Miscellaneous

85. BAR TO APPLICATION OF ACT TO CERTAIN LANDS AND TO CERTAIN CASES.—(1) Nothing in this Act shall apply to—

(b) there shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made ;

(c) if there remains a balance after these sums have been paid there shall be paid to the decree-holder therefrom the costs of application made under this section and any rent which may have fallen due to him in respect of the tenancy between the instiution of the suit and the date of the confirmation of the sale ;

(d) the balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon the expiration of two months from the confirmation of the sale be paid to be the judgment-debtor upon his application unless the Court, for reason to be recorded in writing, otherwise directs.

(2) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (c) of sub-section (1), the Court shall determine the dispute, and the determination shall have the force of decree.

80. Release from attachmert of non-agicuIral tenancies on payment into Court of the amount of decree or on confession of satisfaction by the decree-holder—(1) The provisions of rules 58 to 63 (both inclusive) of Order XXI in Schedule I to the Code of Civil Procedure. 1908. (Act V of 1908), shall not apply to the interest of any non-agricultural tenant in any non-agricultural land attached in execution of a decree for arrears due thereon.

(2) When an order for the sale of the interest of any non-agricultural tenant in any non-agricultural land in execution of such a decree has been made, the interest of such non-agricultural tenant in such land shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree including the costs decreed together with the costs incurred in bringing such interest to sale is paid into Court, or the decree-holder makes an application for the release of such interest from such attachment on the ground that the decree has been satisfied out of Court.

(3) The judgment-debtor or any person whose interests are affected by the sale may pay money into Court under this section.

81. Amount paid into Court to prevent sale to be a mortgage-debt on the tenancy in certain cases.—(1) When any person whose interests are affected by the sale of a tenancy of a non-agricultural tenant advertised for sale in execution of a decree for arrears of rent due in respect thereof or in execution of a certificate

—S. 85

(a) any land vested in, or in the possession of—
(i) a port authority of a port, or
(ii) a railway administration, or
(iii) any local authority, or
(b) any lease in respect of any forest-rights or rights over fisheries or rights to minerals in any non-agricultural land, or
(c) any land acquired under Land Acquisition Act, 1894, (I of 1894), or under any other law, for the use of any Department of the Government, or

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for arrears of rent due in respect thereof signed under the Bengal Public Demands Recovery Act, 1913, (Bengal Act III of 1913) pays into the Court the amount requisite to prevent the sale—

(a) the amount so paid by him shall be deemed to be a debt bearing interest at six and a quarter per centum per annum and secured by a mortgage of such tenancy to him ;
(b) his mortgage shall take priroity over every other charge on such tenancy other than a charge for arrears of rent ;
(c) he shall be entitled to possession of the tenancy as mortgagee of the non-agricultural tenant, and to retain possession of it as such until the debt, with the interst due thereon, has been discharged.

(2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

82. Inferior tenant paying into Court may deduct from rent.—When a tenancy to which the provisions of this Act apply is advertised for sale—

(a) in execution of a decree for arrears of rent due in respect of such tenancy from a superior non-agricultural tenant defaulting or
(b) in execution of a certificate signed under Bengal Public Demands Recovery Act, 1913, (Bengal Act III of 1913), arrears of rent due in respect of such tenancy from a superior non-agricultural tenant defaulting, or

when such sale is set aside under rule 89 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, (Act V of 1908) and an inferior non-agricultufal tenant pays money into Court in order to prevent or set aside the sale, as the case may be, such inferior non-agricultural tenant may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord, and that landlord, if he is not the defaulter, may, in like manner, deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

—S. 85

(d) any other land in the possession of the Government, or

(e) any land held under a public wakf or a trust for public purpose.

(2) Nothing in this Act suall apply to any non-agricultural land held by a tenant under the Government :

Provided that the right vested in a tenant by the provisions of this Act shall not be divested by the acquisition of the superior right only in the land by the Government.

S. 85 : Non applicability of the Act to some public and Government authorities.

The act has no application in respect of any land vested in or in possession of a port authority, railway administration or local authority. Nor does it apply in case of a land required by the Central or Provincial Government under the Land Acquisition Act or under any other law. Abdul Malek Lasker V. Begum Taybunnessa (1966) 18 DLR 618.

S. 85 (1) (d) : Provision in clause (d) means actual physical possession. The term "possession" in clause (d) of section 85 (1) East Bengal Non-Agricultural Tenancy Act means actual physical possession and does not include constructive possession such as having the property under requisition and having alloted the same to somebody who is physically possessing the same. Ibid.

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83. Decree-holder may bid at sale, judgment-debtor may not.—(1) Notwithstanding anything contained in rule 72 of Order XXI in Schedule I to the Code of Civil Procedure, 1908 (Act V of 1908) the holder of a decree for arrears of rent in respect of a tenancy of a non-agricultural tenant in execution of which such tenancy is sold may, without the permission of the Court, bid for or purchase the tenancy.

(2) The judgment-debtor shall not bid for or purchase a tenancy so sold.

(3) When a judgment-debtor purchases by himself or through another person a tenancy so sold, the Court may, if it thinks fit, on the application of the decree-holder or any other person interested in the sale, by order set aside the sale, and the costs of the application and order and any deficiency of price which may happen on the resale, and all expenses attending it shall be paid by the judgment-debtor.

84. Meaning of "arrears" and "arrears of rent".—For the purpose of this Chapter the terms "arrears" and "arrears of rent" shall be deemed to include interest decreed under section 57 or damages awarded in lieu of interest under sub-section (1) of section 58."

—Ss. 85-86

—Land "acquired" by the Central or Provincial Government and also land 'in the possession of' the said Government is excluded from the operation of the Act. Ibid.

—"Possession"—what it connotes.

The word "possession" includes possession however obtained, irrespective of the fact whether it is obtained by acquisition, by requisition. by negotiation in any other manner, legal or otherwise.

S. 85 (2): The Act does not apply to non-agricultural land held by tenant under the Government.

"Held by a tenant under the Central or Provincial Government"—does not include intermediate landlord. Munshi Golam Hossain Vs. Abdul Hafiz (1955) 7 DLR 116.

Sec. 85. Onus will be on the person wanting to exclude the operation of the Act to show that it is within one of the categories mentioned in the Section.. (Sri Radhakrishna Thakurji V. Baby Reghunand Singh 39 CWN 547 P.C.; Herbert Manuers V. Chattur Mahto, 13 CWN 664; Kishenprosad Pandey V. Durgaprosad Thakur, 35 CWN 1217 P.C.)

[1][85A. Appeal and Revision.—(1) An appeal against an order passed by the Deputy Commissioner determining compensation under the proviso to sub-section (1) of section 9 of the proviso to section 20 shall, if presented within thirty days of such order, lie to the Commissioner of Division.

(2) The Board of Revenue may, at any time, on its own motion or on application, revise any order passed by the Commissioner of the Division on appeal under sub-section (1)].

86. Certain contracts not to affect the provisions of the Act.— Nothing in any contract between a landlord and a non-agricultural tenant made before or after the commencement of this Act shall take away or limit the rights of such tenant as provided for by this Act, and any contract which is in contravention of the provisions of this section which is in consistent with, or purports to alter the effect of, any of the provisions of this Act, shall, to the extent of such contravention or inconsistency or to the extent purports to alter such effect, be void and without effect.

1. Sec. 85A inserted by E. P. Ord. No. IX of 1967

—S. 86

S. 86: Gives retrospective effect to section 61 Ibid.

Section 86 of the Act gives retrospective effect to section 61 of the Act so that any contract entered into before the Act came into force which is in contravention of the provisions of section 61 will not be effect to. 8 DLR (Dac.) 279.

—Lays down the rule of prospective operation of the Act. Contracts after the commencement of the Act are void to the extent they conflict with its provisions. There are certain sections however which are retrospective, e.g., Sections 7, 8 and 9. The E.B. Act makes such contracts before the Act also void. Cf. Sec. 178 B. T. Act.

A contract whereby a tenant is given new rights may be on terms agreed upon and the section will not avoid such a contract, (Sarat Chandra V. Taraprasana, 36 CLJ 333).

A compromise embodying terms by which a bonafide dispute is settled would be outside the section, (O.G. Macdonald V. Tekuaram and others, AIR 1925 Pat. 113).

A covenant whereby a part of the rent was kept in abeyance for some time and was made payable thereafter, not hit by the section. (Ramesh Chandra Biswas V. Golam Nabi Fakir, 19 CWN 867). A covenant that in spite of transfer the transferor tenant will remain liable for rent, is binding, (Dinabandhu Roy Vs. W. C. Bannerjee 19 Cal. 774).

A contract regarding the distribution of money awarded in land acquisition cases or stipulating that the entire compensation should go to landlord is binding, (Gadadhar V. Lalit Kumar, 10 CLJ 476; Radhanath V. Krishna Chandra, 40 CWN 722).

Section not retrospective; (Kanak Kanti Roy V. Kripanath Gain 35 CWN 125 at p. 129), a statute cannot have greater retrospective action than what is expressly given.

A contract by a landlord with his tenant, to give effect to a covenant in his own lease with the superior zamindar to return land, was held not hit by sec. 178 B.T. Act, (Jogesh Chandra Roy V. Asaba Khatun, 44 CLJ 220)

A tenant can be ejected only in execution of a decree under the Act, hence a covenant for his ejectment in any other manner or on any other ground is void and inoperative, (Champaklatika V. Nafar Chandra, 15 CWN 536; Debiraddi V. Abdur Rahman, 17 Cal. 196; Buddhimanta v. Sarat Chandra, 13 CLJ 672). So also covenants restricting transfer are void. See Secs. 7, 8 and 9.

Contract providing for interest at rates higher than, or due dates other than mentioned in sec. 57 are void and inoperative. Compromises and contracts stand on same footing, (Gonesh Chandra V. Chandra Mohan, 28 CWN 984), contract

whereby right to take away to utilize trees is denied to the tenant will be bad if after the commencement of the Act, but it would be good if before the Act, See Lakhinath Bera V. Nabadwip Chandra Nandi 31 CWN 192.

Interest at more than 6.1/4 ·/. unrealizable, (Hamiduddin V. Ramani Kanta, 33 CWN cxxiii).

Stipulation in a cultivation lease, that tenant will not change character of land, if a restriction on cultivation of grass land is ineffective, (Sri Radha Krishna Thakhurjee v. Babu Raghunandan Singh, 39 CWN 547 P.P.).

87. Jurisdiction in proceedings under this Act.—When under this Act a Court is authorised to make an order on the application of a landlord or a non-agricultural tenant, the application shall be made to the Civil Court which would have jurisdiction to entertain a suit for possession of the non-agricultural land comprised in the tenancy in connection with which the application is made.

Sec. 87—deals with jurisdiction. The Court having jurisdiction to entertain a suit for possession (Cf. Sec. 144 (3), B. T. Act) is the Court to which applications under this Act are to be made.

Note that the section does not define the Court where a suit is to be brought. We are thus left to the Code of Civil Procedure, Secs. 17-20 C.P. Code, (Fazlul Rahim Abu Ahmed V. Dwarkanath Chowdhury, 30 Cal. 453; Kunja Mohan Chakravarty v. Manindra Chandra Roy Chowdhury, 27 CWN 542). Sec. 144, B.T. Act provides that no suit between a landlord and tenant as such will lie in any Court other than that within the jurisdiction of which the lands of the tenancy are situate.

The Court is authorised to make orders on application in the following cases, namely, sections 8, 9, 10 and 12(2), 24, 51, 52, 53, 54, 77, 79, 80, 81, 82 and 83.

88. Application of the provisions of the Act to all pending suits, appeals and proceedings and unexecuted decrees, for ejectment.—The provisions of thts Act shall apply to all suits, appeals and proceedings including proceedings in execution for the ejectment of a non-agricultural tenant which are pending at the date of the commencment of this Act and also to all decrees passed for the ejectment of a non-agricultural tenant which have not been executed and are not barred by limitation and in respect of which no proceedings in execution are so pending, and the

—S. 88

tenants against whom such suits, appeals or proceedings are so pending or such decrees have been passed shall not be liable to be ejected on any ground except under the provisions of this Act.

S. 88 : The date of the commencement of the Act shall be taken to be the date of the institution of the suit—Period of 12 years—computation—suit against the tenant.

The date that should be taken for the purpose of adjudication will be the date of the institution of the suit. If 12 years are not complete from the date on which the suit was instituted the tenant is not entitled to protection against eviction available to a person with 12 years possession under section 7 of the Act Krishna Ranjan V. Hemchandra (1957) 9 DLR 159.

—Possession till date of suit—Period may be tacked to earlier period to complete twelve years.

The legislature meant to give relief to a non-agricultural tenant not only by enacting section 88 and applying the Act of 1949 retrospectively in the sense that would be taken that all these provisions were in existence on the date of the institution of a suit for ejectment or on the date of execution of the decree thereof or on the date of pending execution proceedings but also by enacting section 89-A and giving further relief to a tenant to the effect that in case he did not complete 12 years on the date of the institution of the suit and he happened to be in possession even after the date of the institution of the suit and this subsequent period coincided with that of the continuance of the above Act of 1941 he would be entitled to tack on this subsequent period of the Act of 1940 the period of his possession before the date of the institution of the suit provided such a period was continuous. Bengal River Service V. Sree Murali Dhar Ray PLD 1959 Dacca 659=7 DLR 525 (DB).

—As a rule the date of the commencement of the Act shall be taken to be the date of the institution of the suit as if the Act was in force at that time. So in the absence of any express provisions in the statute to the contrary a Court should never deviate from this principle. Krishna Ranjan Vs. Hemchandra (1957) 9 DLR 159.

—There should be a presumption under section 88 that the Act was in force at the time the suit uuder appeal was fiied. Where a suit for ejectment has been filed against a tenant the rights of such tenant has to be determined with reference to point of time and that point of time is when the question arose for consideration, i. e., the date when suit was instituted. -Ibid.

—Applicable to pending suit—temporary tenant.

—The provisions of section 88 of the Act are applicable to pending suits, appeals etc., only if a case comes within the ambit of the Act. Its

—S. 88

provisions cannot extend beyond the date of the filing of the suit and hence a person who had been in possession as a temporary tenant but who died before the suit commenced cannot be regarded as a "non-agricultural tenant" within the meaning of the expression defined in the Act if the Act did not come into force at the date of the commencement of the suit. Khagendra Nath V. Naresh (1952) 4 DLR 598.

—The defendants who are the heirs of the last temporary lease holder were not recognised as tenants by the plaintiff-landlord and, therefore, 'in 1943 when the present suit for ejectment commenced the defendants were not 'non-agricultural tenants' as defined in Act IX of 1943 (Bengal Non-Agricultural Tenancy.—Temporary Provisions, Act when that Act was in force. —Ibid.

—If, however, the last temporary 'lease-holder was alive at that stage and the tenancy has terminated by the filing of the suit he could have been taken as coming within the definition of non-agricultural tenant and if he had died subsequently the defendant would have come within the same definition as his successors-in-interest. —Ibid.

—A pucca building of 3 rooms and the land on which the building stood and also the open space lying to the west of the building were let out and the demised leasehold is described as consisting of "Niskar lands etc. & the pucca building for a term of two years with the option of one renewal.. The lessee failed to exercise the option of renewal and continued to hold the tenancy as monthly tenant. The plaintiffs determined the tenancy by 15 days notice to quit after the expiry of the last day of the month.

The Act came into force during the pendency of the appeal.

Held : If the building is separable from the land to its west then the provisions of the Act will apply to that land by virtue of the provisions in section 88 of the Act.—(1951) 3 DLR 115.

—The primary sense of the word "appertaining" is much the same as appurtenances. In view of the clause in lease "Niskar land etc. and the pucca building" and the building and the land having been separately described the primary sense of "appertaining" has been excluded.

Again a thing may be "used and enjoyed" or "occupied" with something else without "belonging or appertaining" thereto. -Ibid.

Ss. 88 & 89 : The tenancy came into existence on 15-8-36. The suit for the ejectment was filed on 30-7-47. The Non-Agricultural Tenancy Act came into force on 20-10-49.

A tenant is entitled to tack on the period between 30-7-47 and 20-10-49 to his tenancy dating 15-8-36 and having on 20-10-49, the date on which the Act came into force, completed 12 years is protected against ejectment by the landlord. Bengal River Service Vs. Sree Murali Dhar (1955) 7 DLR 525.

—S. 88

S. 88 and 89A : A tenant is protected from eviction from any non-agricultural land if he had been in possession thereof for 12 years at the commencement of the East Bengal Non-Agricultural Tenancy Act. In view of the provisions of section 88 of the Act, he is also protected from ejectment, if during the pendency of an ejectment suit or appeal arising therefrom he had completed 12 years possession when the Act came into force.

A tenant who has been served with notice to quit, but who nevertheless continues to be in possession, is to be regarded as a tenant within the meaning of the Act. (1953) 5 DLR 391.

– Twelve years—How may be computed—period of possession after institution of suit—Not to be calculated towards twelve years.

The material point of time for computation of the period of 12 years is the date of institution of suit, as has been held in the case reported in 9 DLR 159, that as a rule, the date of commencement of the Act shall be taken to be the date of institution of the suit as if the Act was in force at that time. Therefore, possession after the institution of the suit is immaterial for the purpose of protection under the Act of 1949, Delbar Vs. Sarada Sundari, PLD 1962 Dacca 548=PLR 1962 Dacca 153=13 DLR 334 (D.B).

—The lessee's possession subsequent to the institution of the suit cannot be tacked to the period up to the institution of the suit, to complete 12 years as the material point of time for computation of the period of 12 years is the date of the institution of the suit, and the date of commencement of the East Bengal Non-Agricultural Tenancy Act, 1949 shall be taken to be the date of the institution of the suit, as if the Act was in force at that time. Construction of sections 88 and 89-A of the Act to include the period from the date of the institution of suit up to the coming into force of the Act, would lead to a very anomalous position, for it would be open to a tenant-defendant to adopt dilatory tactics and get his possession extended from time to time, because if a Court could not dispose of the matter for many years, the tenant would automatically get benefit of this. Kamaruddin Vs. Nripendra Lal. PLD 1964 Dacca 510=15 DLR 694. (PLD 1962 Dacca 548=DLR 159 Foll.)

Ss. 88 & 89A : From the history of the enactment of 1949, starting from the commencement of the East Bengal Non-Agricultural Tenancy (Temporary Provisions) Act of 1940, the legislature mean to give relief to a non-agricultural tenant not only be enacting section 88 and applying the Act of 1949 retrospectively but also giving further relief to tenant by section 89-A to the effect that in case he did not complete 12 years on the date of the institution of the suit and he happened to continue to be in possession even after the date of institution of the suit and this subsequent period coincided with that of the institution of the above act of 1940 he would be entitled to tack on this subsequent period of the Act 1940 to the period of his possession before the date of the continuance of the suit provided such a period was continuous. Bengal River Service Vs. Sree Murali Dhar (1955) 7 DLR 525.

—Ss. 88, 89

Sec. 88—gives retrospective operation to provisions of the Act as far as pending proceedings are concerned. Ordinarily suits, appeals and proceedings pending at the date of commencement of any Act are not affected but by legislative provisions they are affected. After the passing of this Act all suits and appeals then pending must be disposed of according to new Act. (Binapani Debi V. Bankim Behari Ghose, 54 CWN 581). The CP Act makes all decrees capable of execution subject to the Act.

89. Saving of limitation.—In computing the period provided by any law for the time being in force for the execution of a decree for ejectment which was stayed under the Bengal Non-Agricultural Tenancy (Temporary Provisions) Act, 1940, (Bengal Act IX of 1940), or for the institution of a suit for the ejectment of a non-agricultural tenant, the period during which the said Act continued in force shall be excluded.

Ss. 88 & 89 : The tenancy came into existence on 15-8-36. The suit for the ejectment was filed on 30-7-47. The Non-Agricultural Tenancy Act came into force on 20-10-49.

A tenant is entitled to tack on the period between 30-7-47 and 20-10-49 to his tenancy dating 15-8-36 and having on 20-10-49 the date on which the Act came into force, completed 12 years is protected against ejectment by the landlord. Bengal River Service V. Sree Marali Dhar (1955) 7 DLR 525.

—Twelve years—How may be computed—Period of possession after Institution of suit—Not to be calculated towards twelve years.

The material point of time for computation of the period of 12 years is the date of institution of the suit, as has been held in the case reported in 9 DLR 159. that as a rule, the date of commencement of the Act shall be taken to be the date of institution of the suit as if the Act was in force at that time. Therefore, possession after the institution of the suit is immaterial for the purpose of protection under the Act of 1949. Delhar V Sarada Sudari, PLD 1962 Dacca 548=PLR 1962 Dacca 153= Delbar Vs Sarada Sundari (1961) 13 DLR 334 (DB).

—The lessee's possession subsequent to the institution of the suit cannot be tacked to the period up to the institution of the suit, to complete 12 years as the material point of time for computation of the period of 12 years is the date of the institution of the suit, and the date of commencement of the East Bengal Non-Agricultural Tenancy Act, 1949 shall be taken to be the date of the institution of the suit, as if the Act was in force at that time.

—Ss. 89, 89A

Constitution of sections 88 and 89-A of the Act to include the period from the date of the institution of suit upto the coming into force of the Act, would lead to a very anomalous position for it would be open to a tenant defendant to adopt dilatory tactics and get his possession extended from time to time, because if a Court could not dispose of the matter for many years the tenant would automatically get benefit of this. Kamaruddin V. Nripendra Lal. PLD 1964 Dacca 510=Kamaruddin V. Nripendra Lal (1963) 15 DLR 694. (PLD 1962 Dacca 548 Foll).

89A. Calculation of period of possession. In calculating for the purposes of this Act the period for which any non agricultural land has been held by any non-agricultural tenant, the period for which such tenant has held such land while the Bengal Non-Agricultural Tenancy Temporary Provisions) Act, 1940, (Bengal Act IX of 1940), has been in force shall be included.

Ss. 88 & 89A :A tenant is protected from eviction from any non-agricultural land if he had been in possession thereof for 12 years at the commencement of the East Bengal Non-Agricultural Tenancy Act. In view of the provisions of section 88 of the Act, he is also protected from ejectment, if during the pendency of an ejectment suit or appeal arising therefrom he had completed 12 years possession when the Act came into force.

A tenant who has been served with notice to quit, but who nevertheless contineus to be in possession. is to be regarded as a tenant within the meaning of the Act.—(1953) 5 DLR 391.

—From the history of the enactment of 1949 starting from the commencement of the East Bengal Non-Agricultural Tenancy (Temporary Provisions) Act of 1940, the legislature means to give relief to a non-agricultural tenant not only by enacting section 88 and applying the Act of 1949 retrospectively, but also giving further relief to a tenant by section 89-A to the effect that in case he did not complete 12 years on the date of the institution of the suit and he happened to continue to be in possession even after the date of the institution of the suit and this subsequent period coincided with that of the continuance of the above act of 1940 he would be entitled to tack on this subsequent period of the Act 1940 to the period or his possession before the date of the institution of the suit provided such a period was continuous. Bengal River Service V. Sree Marali Dhar. (1955) 7 DLR 525.

S. 89A ; This section gives tenant a further period in addition to the period already put in before the institution of the suit—the further period being between the 30th of July, 1947 and the last date of the Act of 1940, i.e., 20th October, 1949. After tacking on this latter period to that prior to the

—Ss. 89A-90

institution of the suit if the tenant completes continuously 12 years, he is entitled to the protection by section 89A. -Ibid-

—The tenant sought protection under section 7(4) of the East Bengal Non Agricultural Tenancy Aet against an ejectment suit by the Landlord. The tenancy in question came into existence on 28-1-34 and the East Bengal Non-Agricultural Tenancy Act (XXIII of 1949) came into force on 20-10-49 that is, 12 years were not complete between the date when the tenancy came into being on 20-10-49 when Act XXIII of 1949 came into force.

Held : In view of the provision of section 89A of the Act, the tenant not having completed 12 years before these two dates he cannot resist the landlord's suit for ejectment. Nihar Ranjan V. Nurannese Chowdhurani (1958) 10 DLR 472.

90. Repeal of Bengal Act IX of 1940 and Assam Act X of 1947. (1) The Bengal Non-Agricultural Tenancy (Temporary Provisions) Act, 1940, (Bengal Act IX of 1940), and the Sylhet Non-Agricultural Urban Areas Tenancy Act, 1947, (Assam Act X of 1947), are hereby repealed.

(2) All rents settled or orders issued, suits or other proceedings instituted and other things duly done under the Sylhet Non-Agricultural Urban Areas Tenancy Act, 1947, (Assam Act X of 1947), shall, insofar as they are consistent with the provisions of this Act, be deemed to have been respectively settled, issued, instituted or done hereunder.

S. 90 ; The date that should be taken for the purpose of adjudication will be the date of the institution of the suit, if 12 years are not complete from the date on which the suit was instituted, the tenant is not entitled to protection against eviction available to a person with 12 years' possession under section 7 of the Act.

As a rule, the date of the commencement of the Bengal Non-Agricultural Tenancy Act shall be taken to be date of the institution of the suit as if the Act was in force at that time. So, in the absence of any express provisions in the statute to the contrary a court should never deviate from this principle. Krishna Ranjan V. Hemchandra (1957) 9 DLR 159.

—There should be a presumption under section 88 that the Act was in force at the time the suit under appeal was filed when a suit for ejectment has been filed against a tenant the rights of such tenant has to be determined with reference to a point of time and that point of time is when the question arose for consideration i.e. the date when the suit was instituted. -Ibid-

—Ss. 90-91

Sec. 90.....provides that in computing the period of a non-agricultural tenant holding his land as required in Sections 7 and 9, the time between expiry of the term of the lease and the expiry of Act IX of 1940, and in other case i.e., where there is no lease, the whole period during which Act IX of 1940 was in force is to be excluded. This is because the landlord even if he had so desired could not eject his tenant during that period. No one is bound to institute a vain litigation at his peril, (Venkatadri Appa Rao V. Mahboob Sfirhraz Parthasarathi, 29 CWN 989 P C at 998).

91. Rules.—(1) The Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :

[1 * * *]

[2 (c) the manner of determining compensation referred to in the proviso to sub-section (1) of section 9 and in the proviso to section 20 ;]

(d) the forms of the notices referred to in section 23, and the amount of the process-fees, referred to in the said section ;

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1. Clauses (a) and (b) omitted by E. P. Ord. IX of 1967. Omitted clauses ran as follows :—

"(a) the manner in which the landlord or the tenant may apply to the Court under sub-section (2) of section 8 ;

(b) the determination of a fair and equitable rent referred to in sub-section (3) of section 11"

2. Subs., ibid. Substituted portion ran as follows :—

3. Cls. (e) to (r) omitted by E. P. Ord. IX of 1967. Omitted clauses ran as follows :—

"(e) the manner of making a survey and preparing a record-of-rights in pursuance of an order under section 27 and the procedure to be followed and the powers to be exercised by Revenue-officers when an order under the said section is made ;

(f) the form of a settlement rent-roll referred to in section 29, the manner of preparing the same and the particulars to be specified therein ;

—S. 91

[1][(rr) the Revenue-officer referred to in sub-section (1) of section 68 ;]

(s) the manner of service of notice issued under this Act where the mode of such service is not provided in this Act.

S. 91

Repeal—The Non-Agricultural Land Assessment Act, 1936 and the Agricultural Tenancy Act, 1940 are both no longer required.

Provision has been made in this Act for matters therein provided.

(g) the division of a tenancy and the apportionment of the rent under clause (b) 8f section 30 ;

(h) the manner and period of publication of a draft settlement rent roll under sub-section (1) of section 31 and the disposal objections under that sub-section ;

(i) the Revenue authority referred to in sub-section (1) of section 32 ;

(j) the publication of the date of confirmation of a settlement rent-roll under sub-section (3) of section 32 and the place and times of inspection of such roll ;

(k) the Revenue authority referred to in sub-section (1) of section 33, the manner of presentation of appeals to such authority and the Board of Revenue and the periods within which such appeals shall be presented under the said sub-section ;

(l) the settlement of rents referred to in section 38 ;

(m) the manner of payment or tender of rent by postal money-order under section 44 ;

(n) the forms to be used generally or for any particular local area or class or classes for the receipt and counterfoil referred to in section 46 and for the statement of account referred to in sub-section (2) of section 47 and the particulars to be specified in such receipt, counterfoil aud statement ;

(o) the cost of transmission of the money deposited in the cases referred to in clauses (a) and (b) of sub-section (1) of section 51 and the amount of the fee referred to in clause (d) of sub-section (2) of that section ;

(p) the manner of publication of the general notice referred to in sub-section (2) of section 59 ;

(q) the form of, the particulars to be contained in and the manner of verification of applications referred to in sub-section 67 ;

(r) that amount of process-fee referred to in the second proviso to sub-section (1) of section 72 and the amount of fee referred to in sub-section (3) of that section ;

1. Inserted, ibid.

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