

4

ASSAM ACT IV OF 1943
THE GOALPARA TENANCY (AMENDMENT) ACT, 1943.

(Passed by the Assam Legislature)

(Received the assent of the Governor-General on the 29th May 1943.)

[Published in the *Assam Gazette* of the 16th June 1943]

An Act further to amend the Goalpara Tenancy Act, 1929 (Assam Act I of 1929).

Preamble. WHEREAS it is expedient further to amend the Goalpara Tenancy Act, 1929, in the manner hereinafter appearing ; Assam Act I of 1929.

And whereas the previous sanction of the Governor has been obtained to the introduction of this Bill :

It is hereby enacted as follows :—

Short title and commencement. 1. (1) This Act may be called the Goalpara Tenancy (Amendment) Act, 1943.

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

Local extent. (3) It shall have the like extent as the Goalpara Tenancy Act, 1929, hereinafter referred to as the said Act. Assam Act I of 1929.

Amendment of section 8 of Assam Act I of 1929. 2. In section 8 of the said Act for the words "the landlord's fee", wherever they occur, the words "the landlord's registration fee" shall be substituted.

Substitution of new section for section 20 of Assam Act I of 1929. 3. For section 20 of the said Act the following section shall be substituted, namely :—

"20. (1) The holding of an occupancy jotedar or of an occupancy raiyat or a portion or a share thereof together with the right of occupancy therein shall be capable of being transferred and bequeathed in the same manner and to the same extent as other immovable property and all transfers made by sale, exchange or gift and all bequests shall, subject to the provisions of sub-section (2), be binding on the landlord.

(2) (a) Every transfer shall be made by registered instrument, except in the cases of a bequest or a sale in execution of a decree or of a certificate signed under the Bengal Public Demands Recovery Act, 1913. Bengal Act III of 1913.

(b) A registering officer shall not register any such instrument unless there is tendered to him a notice giving particulars of the transfer in the prescribed form together with the process fee of the prescribed amount for the service of the notice.

(c) Where any such instrument is registered the registering officer shall send to the Deputy Commissioner the notice of the transfer in the prescribed form, and the Deputy Commissioner shall cause the notice to be served on the landlord named in the notice or his common agent, if any, in the prescribed manner :

Provided that when a sole landlord purchases a holding or a share or a portion thereof no notice need be served.

(3) In the case of a bequest, the Court shall, before granting probate or letters of administration, require the applicant to file a notice giving particulars of transfer in the prescribed form and to deposit a process fee of the prescribed amount for service on the landlord or his common agent, if any. When probate or letters of administration have been granted, the Court shall send to the Deputy Commissioner the notice :

[Price annas 2 or 2d.]

Provided that in the case of a bequest by a Muhammadan where no probate is applied for, the executor or legatee shall file the notice and deposit the process fee in the Court of the Deputy Commissioner.

(4) (a) When the holding of an occupancy jotedar or of an occupancy raiyat or a portion or a share thereof is sold in execution of a decree or a certificate signed under the Bengal Public Demands Recovery Act, 1913, other than a decree or certificate for arrears of rent due in respect of the holding or of dues recoverable as such, and neither the purchaser nor the decree-holder is the sole landlord, the Court or the Revenue Officer, as the case may be, shall, before confirming the sale, require the purchaser to file a notice giving particulars of the transfer in the prescribed form and deposit in addition to the purchase money a process fee of the prescribed amount. Bengal Act, III of 1913.

(b) When a mortgage of a holding of an occupancy jotedar or of an occupancy raiyat or a portion or share thereof is foreclosed, and the decree-holder is not himself the sole landlord, the Court shall, before making a decree or an order absolute or the foreclosure, require the mortgagee to file a notice giving particulars of the transfer in the prescribed form and to deposit a process fee of the prescribed amount.

(c) If the purchaser fails to comply with the order of the Court or the Revenue Officer under clause (a) within such time as may be specified in the said order, the Court or the Revenue Officer may make an order for the forfeiture of the purchase money and for the re-sale of the holding or portion or share thereof. If the mortgagee fails to comply with the order under clause (b) within such time as may be specified therein, the Court may make an order for dismissal of the suit for foreclosure.

(d) When the sale has been confirmed or the decree or order absolute for the foreclosure has been made, the Court shall send to the Deputy Commissioner the notice of the sale or final foreclosure in the prescribed form.

(5) The Deputy Commissioner shall cause the notice to be served on the landlord named in the notice or his common agent, if any, in the prescribed manner.

(6) After receipt of such notice of transfer, the landlord shall not refuse to recognise the transferee as the tenant in respect of the holding or portion or share thereof transferred nor omit to enter the transferee's name in the landlord's rent-roll in place of that of the transferor, or where only a share or a portion of the transferor's interest has been transferred, along with the name of the transferor:

Provided that such recognition shall not operate as the admission of the amount or fixity of rent or of the area or of any incident of such occupancy holding or be deemed to constitute an express consent of the landlord to the division of the holding 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, the party in whose favour such order has been made shall, unless such order has been passed in a suit, appeal or other proceeding to which the landlord or the entire body of landlords was a party, file with the

Deputy Commissioner a notice describing the modifications made by such order and deposit the prescribed fee for the service of such notice. The Deputy Commissioner shall cause the notice to be served on the landlord named in the notice or his common agent, if any, in the prescribed manner. The landlord, on receipt of such notice, shall cause his rent-roll to be corrected accordingly.

(7) In this section 'transferee' includes the successors-in-interest of the transferee; and 'transfer' includes bequest but does not include (i) succession by inheritance, (ii) division of tenancies in accordance with section 76, (iii) leases executed in accordance with the provisions of this Act, (iv) complete usufructuary mortgages, (v) simple mortgages or mortgages by conditional sale until a final decree for sale or foreclosure is made.

(8) In sub-section (4), 'purchaser' includes the successors-in-interest of the purchaser and 'mortgagee' includes the successors-in-interest of the mortgagee."

Deletion of section 21 of Assam Act I of 1929.

4. Section 21 of the said Act shall be deleted.

Deletion of section 22 of Assam Act I of 1929.

5. Section 22 of the said Act shall be deleted.

Deletion of section 23 of Assam Act I of 1929.

6. Section 23 of the said Act shall be deleted.

Substitution of new section for section 25 of Assam Act I of 1929.

7. For section 25 of the said Act the following section shall be substituted, namely :—

"What kind of usufructuary mortgage occupancy tenant may execute.

25. (1) An occupancy tenant may enter into a complete usufructuary mortgage in respect of his holding or a portion or share thereof for any period which does not or cannot, in any possible event, by any agreement, express or implied, exceed nine years; and notwithstanding anything contained in this Act or in any other law or in any contract, no other form of usufructuary mortgage so entered into after the commencement of this Act shall have any force or effect.

(2) Notwithstanding anything contained in this Act or in any other law or in any contract, every usufructuary mortgage subsisting on the date on which the Goalpara Tenancy (Amendment) Act, 1943, comes into force, which was so entered into before the commencement of this Act shall be deemed to have taken effect as a complete usufructuary mortgage for the period mentioned in the instrument or for twelve years, whichever is less.

(3) Notwithstanding any contract to the contrary entered into before or after the commencement of this Act such a complete usufructuary mortgage or a mortgage referred to in sub-section (2) may be redeemed at any time before the expiry of the periods referred to in sub-section (1) or sub-section (2) as the case may be.

(4) Every complete usufructuary mortgage entered into after the commencement of this Act shall be registered under the Indian Registration Act, 1908. Act XVI of 1908.

(5) Notwithstanding anything contained in this Act or in any other law, no document creating or purporting to create (a) any other form of usufructuary mortgage or (b) a complete usufructuary mortgage for a period exceeding nine years shall be received in evidence or acted upon in any Court or by any public servant :

Provided that such a document executed before the commencement of this Act may be so received in evidence or so acted upon as a complete usufructuary mortgage for the period mentioned therein or twelve years, whichever is less.

(6) Notwithstanding anything contained in this Act or in any other law or in any contract, the consideration (with all interest thereon) for a complete usufructuary mortgage or for any other form of usufructuary mortgage deemed under sub-section (2) to have taken effect as a complete usufructuary mortgage entered into by an occupancy tenant in respect of his holding or a portion or share thereof, shall be deemed to have been extinguished on the expiry of the period,

(a) mentioned in the instrument of the mortgage, or

(b) of twelve years from the date of the registration of the instrument, whichever is less, or where there is no registered instrument, from the date of the mortgagee's entry into possession, and the mortgagor shall thereupon become entitled to possession of the mortgaged holding, and he may, if he is not forthwith given possession, apply to the Court or to a Revenue Officer to be restored thereto :

Provided that, if in the case of such a mortgage subsisting on the date on which the Goalpara Tenancy (Amendment) Act, 1943, comes into force, the said period has, on the date of the commencement of the said Act, already expired, the mortgagor shall, immediately on the commencement of the said Act, become entitled to possession of the mortgaged holding ; but he shall not be entitled to, nor shall the mortgagee be liable for, any compensation in respect of the mortgagee's possession from the date of the expiry of the said period to the date of the commencement of the said Act.

(7) An application under sub-section (6) shall be accompanied by a process fee of the prescribed amount for service of notice on the mortgagee, and the Court or Revenue Officer to which such an application is made, may, after service of such notice, award to the mortgagor such compensation as appears equitable in respect of the period during which the mortgagee retained possession after the date on which the mortgagor became entitled to be restored to possession, and may pass an order restoring the possession of the land mortgaged to the mortgagor, and such order shall have the effect of a decree of a Civil Court.

Explanation.— A "complete usufructuary mortgage" means a transfer by a tenant of the right of possession in any land for the purpose of securing the payment of money or the return of grain advanced or to be advanced by way of loan, upon

the condition that the loan, with all interest thereon, shall be deemed to be extinguished by the profits arising from the land during the period of the mortgage."

Amendment of section 26 of Assam Act I of 1929. 8. In section 26 of the said Act for the word and figure "to 25" the word and figure "and 24" shall be substituted.

Amendment of section 33 of Assam Act I of 1929. 9. In sub-section (1) of section 33 of the said Act for the words "An occupancy raiyat may institute a suit for the reduction of rent", the following words shall be substituted, namely :—

"An occupancy jotedar or an occupancy raiyat may claim reduction of rent either by a suit or in a defence in a suit for arrears of rent."

Amendment of section 41 of Assam Act I of 1929. 10. At the end of the proviso to section 41 of the said Act the following words shall be added :—

"nor shall it exceed in the case of an under-raiyat holding immediately under a raiyat the rent paid by the latter to his landlord by more than a hundred per cent. and in the case of an under-raiyat holding mediately the rent paid by his under-raiyat landlord to the latter's landlord by more than twenty-five per cent."

Insertion of new section 41A. 11. After section 41 of the said Act the following section shall be inserted as section 41A :—

"Limited right of occupancy of under-raiyats. 41A. Every person who, for a period of twelve years, whether wholly or partly, before or after the commencement of the Goalpara Tenancy (Amendment) Act, 1943, has continuously held land as an under-raiyat, whether under a lease or otherwise, shall be deemed to have acquired, on the expiry of that period, a limited right of occupancy in the land which he has so held for the said period. The provisions of sub-sections (4), (5) and (6) of section 15 shall apply *mutatis mutandis* to the construction of the expression "every person.....has continuously held land as an under-raiyat."

Amendment of section 42 of Assam Act I of 1929. 12. In section 42 of the said Act the following words shall be inserted at the commencement, namely :—

"Except as provided in section 42A "

Insertion of new section 42A. 13. After section 42 of the said Act the following section shall be inserted as section 42A :—

"Incident of tenancy of an under-raiyat who has acquired right of occupancy. 42A. An under-raiyat who has acquired a limited right of occupancy in any land under section 41A shall be subject to the same provisions with respect to rights in trees and the use of, succession to, and eviction from, such land as an occupancy raiyat. The provisions of sections 29 to 35 (both inclusive) shall, so far as may be, apply in the case of such an under-raiyat."

Deletion of section 43 of Assam Act I of 1929. 14. Section 43 of the said Act shall be deleted.

Insertion of a new sub-section to section 46 of Assam Act I of 1929. 15. In section 46 of the said Act—

(1) the following sub-section shall be inserted as sub-section (2), namely :—

“(2) Notwithstanding anything contained in the foregoing sub-section, if there is any arrear of rent due by the tenant, the recovery of which is not barred by the law for the time being in force as to limitation of suits for arrears of rent, the payment may, at the option of the landlord, be applied first to such arrear,” and

(2) the existing sub-section (2) shall be renumbered as sub-section (3).

Amendment of section 56 of Assam Act I of 1929. 16. In section 56 of the said Act for the words “twelve and half”, the words “six and a quarter” shall be substituted and the words “of that quarter” shall be deleted.

Deletion of section 57 of Assam Act I of 1929. 17. Section 57 of the said Act shall be deleted.

Insertion of a proviso after clause (a) of section 58 of Assam Act I of 1929. 18. After clause (a) of section 58 of the said Act, the following proviso shall be added, namely :—
“Provided that the land held in *bona fide* but found on measurement to be in excess of the holding shall form part of the same holding ; and the tenant thereof shall be liable to pay rent for such excess at the rate of rent of the original holding.”

Amendment of section 59 of Assam Act I of 1929. 19. In sub-section (1) of section 59 of the said Act the words “five times” shall be deleted and for the words “ten times” the words “three times” shall be substituted.

Amendment of section 69 of Assam Act I of 1929. 20. Clause (d) of section 69 of the said Act shall be deleted.

Amendment of section 70 of Assam Act I of 1929. 21. (1) For the existing proviso to section 70 of the said Act the following proviso shall be substituted, namely :—

“Provided that an under-riyat who has acquired a limited right of occupancy in the holding shall not be liable to be ejected from such holding except on the ground—

(i) that he has used the land in a manner rendering it unfit for the purpose of the tenancy, or

(ii) that he has broken a condition relating to the use and occupancy of the land of his tenancy and consistent with the provisions of this Act, on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.”

Substitution
of a new
section for
section 76 of
Assam Act I
of 1929.

22. For section 76 of the said Act the following section shall be substituted, namely :—

“Division of
tenancy not
valid unless
consented to
by all parties
or ordered
by Civil
Court.

76. (1) Save as provided elsewhere in this section, a division of a tenure or holding or a distribution of the rent payable in respect thereof shall not be valid unless such division or distribution has been expressly consented to in writing by both—

(a) the landlord or the entire body of landlords or their agents duly authorised in that behalf, and

(b) all the recorded co-sharer tenants :

Provided that, if there is proved to have been made in any landlord's rent-roll any entry showing that any tenure or holding has been divided or that the rent payable in respect thereof has been distributed, such landlord may be presumed to have given his express consent in writing to such division or distribution.

(2) The Civil Court, on application made to it by a landlord or one or more co-sharer tenants for a division of a tenure or holding or for a distribution of the rent payable in respect thereof, or for the annulment or modification of a previous division or distribution other than the one made under this subsection or under an agreement made between all the landlords and co-sharer tenants in conformity with the provisions of subsection (1), may by order in writing, direct such division of the tenure or holding or such distribution of rent as the Court considers fair and equitable or annul or modify a division or distribution previously made other than the one of the nature referred to above if the Court considers it unfair and inequitable :

Provided that—

(a) no such order shall be passed without notice to the landlord or the remaining landlords and to all or the remaining co-sharer tenants, as the case may be, the prescribed process fee for which shall accompany the application ;

(b) no order for division or distribution shall be made which would result in bringing the rent for any portion below two rupees in the case of tenures or one rupee in the case of holdings ; and

(c) nothing contained in this sub-section shall be deemed to authorise a Court on an application from a tenant for division or distribution to direct a division or distribution in respect of the share of any tenant other than an applicant under this sub-section or a co-sharer tenant who has been joined as a co-applicant under sub-section (3).

(3) On receipt of notice of an application from a tenant for division or distribution under sub-section (2) a co-sharer tenant may apply to be joined as a co-applicant, and upon such application the Court shall join the said co-sharer tenant as a co-applicant without further notice to the landlord or landlords and the remaining co-sharer tenants.

(4) Every order of a Court under sub-section (2) directing division of a tenure or holding or a distribution of the rent thereof shall also direct the supply to the landlord at the cost of applicant tenants, if any, of certified copies of the Court's order (together with those of map and *chitha*, if required for the elucidation of the Court's order) and the payment of one rupee as mutation fee for each separate tenancy created by the division or each separate account ordered to be opened.

(5) Every order referred to in sub-section (4) shall state the date from which the division (or distribution) shall have effect, and the joint and several liability of each co-sharer tenant for arrears of rent, if any, up to that date, shall subsist in all the lands of the entire tenure or holding.

(6) An appeal shall lie to the ordinary Civil Appellate Court from an order of a Court under this section, provided that it is presented within thirty days from the date of such order and is accompanied by the prescribed fee."

Deletion of
section 77 of
Assam Act I
of 1929.

23. Section 77 of the said Act shall be deleted.

Amendment
of section 79
of Assam
Act I of
1929.

24. In sub-section (5) of section 79 of the said Act for the figure '43', the figure and letter '42A' shall be substituted.

Amendment
of section 81
of Assam Act
I of 1929.

25. In sub-section (1) of section 81 of the said Act after the word "raiyat" the words "or under-raiyat" shall be inserted and the following proviso shall be added at the end, namely:—

"Provided that he shall be entitled to surrender the portion if any of his holding which has materially deteriorated after the commencement of the tenancy due to deposit of sand or any other cause beyond his control".

Amendment
of section 82
of Assam Act
I of 1929.

26. In sub-section (1) of section 82 of the said Act, after the first two provisos the following shall be inserted as an additional proviso, namely:—

"Provided further that if an under-raiyat has a right of occupancy in the holding or a portion thereof the landlord shall, before entering on the holding under this section, offer the whole holding to the under-raiyat at the rent paid by the raiyat and on condition of the under-raiyat paying off all arrears due from the raiyat. If the under-raiyat refuses or neglects within a reasonable time to accept the offer, the landlord may enter on the holding and let it to another tenant or cultivate it himself."

Substitution
of new sec-
tion for sec-
tion 83 of
Assam Act I
of 1929.

27. For section 83 of the said Act the following section shall be substituted, namely :—

“Abatement
of rent on
account of
diluvion
and re-en-
try into
lands which
re-appear.

83. (1) If the entire land of a tenure or holding or a portion of such lands are lost by diluvion, the rent of the tenure or holding shall be abated by an amount which bears the same proportion to the rent of the whole tenancy, as the area lost bears to that of the whole tenancy.

(2) (a) Notwithstanding anything contained in this Act or in any other law or in any contract to the contrary, the right, title and interest of the tenant or his successors-in-interest shall subsist in such lands or portion thereof during the period of loss by diluvion not exceeding twenty years or till three years after their reappearance, whichever period is less. The tenant or his successors-in-interest shall claim immediate possession of the lands or portions thereof by serving on the landlord a notice in the prescribed form and manner within two years of the reappearance of such lands. The landlord shall have a right to the arrears of rent without interest in respect of the land which has reappeared for the period during which it was lost or for three years, whichever is less.

(b) The rent of the lands which have reappeared shall, for the purposes of the payment both of the arrears of rent under this sub-section and of the rent due thereafter (until such rent is modified in accordance with the provisions of this Act), be calculated on the basis of the rent of the remainder of the tenancy existing when possession of the lost land is resumed, and shall bear the proportion to that rent which the area of the lands which have reappeared bears to that of the remainder of the tenancy :

Provided that in cases where the entire tenure or holding has been lost by diluvion, the rent of the portion thereof which reappears shall be calculated in like manner on the basis of the rent existing when the entire tenancy was lost.

(3) Nothing shall prevent the accrual of rights under the operation of any other enactment in any portion of the lands of a tenure or holding which have been lost by diluvion, if such lands thereafter reappear as an accretion thereto.”

Amend-
ment
of section
84 of
Assam Act
I of 1929.

28. Sub-section (2) of section 84 of the said Act shall be re-numbered as clause (a) of sub-section (2) and the following clause shall be added as clause (b) :—

“(b) Notwithstanding anything contained in the preceding clause, an occupancy tenant shall, subject to the provisions of section 27 have full dominion over such *Sal* or *Sisu* trees as were planted in the land during the pendency of the tenancy. Where land has been held by the tenant continuously for twenty years all trees standing thereon shall be presumed to have been planted during the pendency of the tenancy. The provisions of sub-sections (4), (5) and (6) of section 15 shall apply *mutatis mutandis* to the construction of the expression ‘held by the tenant continuously’ ”

Insertion of new sections.

29. At the end of Chapter IX of the said Act the following sections shall be inserted, namely :—

"Suspension of provisions relating to enhancement of rent.

95A. (1) All the provisions of Chapters III, IV, V and VI of this Act relating to enhancement of rent are hereby suspended for a period of ten years from the date of the commencement of the Goalpara Tenancy (Amendment) Act, 1943.

(2) Any provision for enhancement of rent contained in any contract entered into between a landlord and a tenant during the period of ten years referred to in sub-section (1) is hereby declared to be inoperative during the said period.

(3) Notwithstanding anything contained in this Act or in any other law, the period during which a decree, order or contract is rendered inoperative under this section shall not be taken into account in computing any period under the law of limitation nor in construing the terms of a contract.

Power to authorise special settlement in exceptional circumstances.

95B. (1) The Provincial Government shall, on being satisfied that the exercise of the powers hereinafter mentioned is necessary in the interests of public order or of the local welfare, invest a Revenue Officer with the following powers or either of them, namely :—

(a) power to settle rents ;

(b) power when settling rents to reduce rents if, in the opinion of the officer, the maintenance of existing rents would on any ground, whether specified in this Act or not, be unfair or inequitable.

(2) The powers given under this section shall be made exercisable within a specified area either generally or with reference to specified classes of cases.

(3) The Revenue Officer shall in the exercise of his power proceed in the prescribed manner.

(4) The order of the Revenue Officer shall be appealable before the Revenue Tribunal or such other authority as may be prescribed by the Provincial Government."

Amendment of section 98 of Assam Act I of 1929.

30. In sub-clause (iv) of clause (b) of sub-section (1) of section 98 of the said Act, for the figure '43' the figure and letter '42A' shall be substituted.

Deletion of section 140 of Assam Act I of 1929.

31. Section 140 of the said Act shall be deleted.

Deletion of section 141 of Assam Act I of 1929.

32. Section 141 of the said Act shall be deleted.

Deletion of sections 142 and 143 of Assam Act I of 1929.

33. Sections 142 and 143 of the said Act shall be deleted.

Amendment of section 147 of Assam Act I of 1929.

34. In section 147 of the said Act, the words and figure "or damages under section 57" shall be deleted.

Amendment of section 148 of Assam Act I of 1929. 35. In section 148 of the said Act the "semi-colon" after the word "judgment" occurring for the second time shall be substituted by a "fullstop" and the remainder of the section shall be deleted.

Amendment of section 152 of Assam Act I of 1929. 36. In sub-section (c) of section 152 of the said Act, the words and figure "or damages awarded in lieu of interest under section 57" shall be deleted.

Amendment of section 162 of Assam Act I of 1929. 37. In clause (a) of sub-section (1) of section 162 of the said Act for the words "twelve and a half" the words "nine and three-eighths" shall be substituted.

Repeal of Chapter XII of Assam Act I of 1929. 38. Chapter XII of the said Act shall be repealed.

Amendment of section 171 of Assam Act I of 1929. 39. In clause (b) of sub-section (2) of section 171 of the said Act after the word "raiyat", the words "or under-raiyat" shall be inserted.

Amendment of section 177 of Assam Act I of 1929. 40. In section 177 of the said Act, for the "colon" after the words "and the like" a "fullstop" shall be substituted, and the Proviso shall be deleted.

Amendment of section 182 of Assam Act I of 1929. 41. For clause (e) of section 182 of the said Act the following clause shall be substituted, namely :—
“(e) Any enactment relating to *Patni* tenures in so far as it relates to those tenures except that—

- (i) the provisions of section 56 and of clause (g) of sub-section (1) of section 171 shall apply to all *Patni* tenures and (ii) the expression "*khudkast* raiyat or resident and hereditary cultivator" in sub-section (3) of section 11 of the Bengal *Patni* Taluks Regulations, 1819, shall be deemed to include all raiyats having a right of occupancy, or”.

Bengal Regulation VIII of 1819.