KLE LAW ACADEMY BELAGAVI

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STUDY MATERIAL

for

LAND LAWS

Prepared as per the syllabus prescribed by Karnataka State Law University (KSLU), Hubballi

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LAND LAWS

UNIT – I

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LAND LAWS

UNIT-1

SYNOPSIS OF UNIT

- Social Impact Assessment
- Public purpose
- Provision to Safeguard Food Security
- Notification & Acquisition
- Rehabilitation & Resettlement Award
- Bibliography

Synopsis of Topic

- *Overview*
- *Legal basis of SIA*
- *SIA under the RFCTLARR 2013*
- *History*
- *Process flow of SIA*
- *Relevance of SIA*
- *The Need for SIA*
- *Conclusion*

Social Impact Assessment

Overview

According to the International Association for Impact Assessment (IAIA), 'Social Impact Assessment' is a process that integrates the processes of analysing, monitoring and managing the intended and unintended social consequences, both positive and negative, of planned interventions (policies, programs, plans, projects) and any social change processes invoked by those interventions. Its primary purpose is to bring about a more sustainable and equitable biophysical and human environment.

SIA is thus overarching framework that embodies the evaluation of all impacts on humans and on all the ways in which people and communities interact with their socio-cultural, economic and biophysical surroundings. SIA thus has strong links with a wide range of specialist sub-fields involved in the assessment of areas such as: cultural heritage impacts

(both tangible and non-tangible); community impacts; cultural impacts; demographic impacts; development impacts; economic and fiscal impacts; impacts on indigenous rights; infrastructural impacts, institutional impacts; political impacts (human rights, governance, democratisation etc); poverty; psychological impacts; resource issues (access and ownership of resources); impacts on social and human capital; and other impacts on societies. As such, comprehensive SIA cannot normally be undertaken by a single person, but requires a team approach.

The objective of SIA, as per the IAIA, is to ensure that the development process maximises its benefits and minimises its costs, especially those costs borne by people (including those in other places and in the future. By identifying impacts in advance:

1. better decisions can be made about which interventions should proceed and how they should proceed; and

2. mitigation measures can be implemented to minimise the harm and maximise the benefits from a specific planned intervention or related activity.

Legal basis of SIA

Historically the late 1960s and early 1970s saw a rise in consciousness of the social impacts of development projects when the US National Environment Policy Act (NEPA) introduced a requirement to ensure that major federal actions significantly affecting the quality of the human environment were incorporated into a balanced and publicly available assessment of the likely impact of such actions. Since then SIA has been a significant part of the development process in many countries throughout the world.

SIA under the RFCTLARR 2013

As per the Constitution of India, while land is a state subject (Entry 18 of the State list), acquisition and requisition of property (including land acquisition) falls under Entry 42 of the Concurrent list. In democratic societies, this power to acquire land by the sovereign state is exercised for a 'public purpose'. The term 'public purpose' is very wide in its connotation and includes privately-executed projects if they result in an indirect public good or some larger good to society (including increased tax revenue or employment).

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (RFCTLARR Act) has made the rehabilitation and resettlement of people struck by the acquisition of their land, a part of the land acquisition process itself. The

provisions of social impact assessment and (mandatory) consent by the people (landowners) whose lands the government intends to acquire, are the two shining cornerstones of this act that make it revolutionary in enabling democratisation of the whole process of land acquisition.

History

No SIA; Unprecedented Problems

Prior to the enactment of the present act, development or industrial projects executed anywhere in the country did not have any stringent parameters for measuring the magnitude of the repercussions that would be felt my communities residing in and around the site of the project. Consequently a large number of affected people were left out of any rehabilitation or resettlement plans that were developed for the same projects in an ad hoc manner. A few examples of the same-

1. Sardar Sarovar Dam, Gujarat, 1980s-

One of the most controversial and glaring examples of the lack of a systematic social impact assessment study conducted to enumerate the population of displaced and affected people. Rehabilitation of more than half of the population affected by submergence is yet to happen even though the project is deemed to be complete and was inaugurated as late as 2017.

2. Bilaspur Dam Project, Rajasthan, 1990s -

In the absence of any proper socio-economic-cultural impact survey, no proper plan for resettlement or rehabilitation was put in place, which allowed eventually an extremely haphazard 'jungle-raj' like scenario of providing compensation to the affected or displaced people. Genuinely affected poor were even cheated for their compensation.

3. Rengali Irrigation Project, Rengali, Odisha, 1985

A rough estimate of more than 10000 families displaced, the project had an ineffective rehabilitation management, where the allotted barren unirrigated lands which they could not use for any economy generation being unskilled in land use and having no skill upgradation.

Process flow of SIA

Determination of Social Impact and Public Purpose

A- Preliminary investigation for determination of Social Impact and Public Purpose-

Preparation of Social Impact Assessment Study U/s 4

Government to consult with Municipality, Panchayat, etc in the affected area and carry out a SIA study

Notification to this effect to be made available in local language to the concerned offices i.e. District Collector, Sub Collector, Tehsil, Municipality, Panchayat etc

Study to be completed in six months, team to include adequate representation from panchayat or municipality i.e. elected representatives of the people

Various parameters to be studied are mentioned ahead in this document.

The authority conducting the study to prepare a Social Impact Management Plan (SIMP) , listing ameliorative measures required to be undertaken for addressing specific components (these should not be less than other contemporary schemes/plans operational in that area

Public hearing for Social Impact Assessment U/s 5

Appropriate government to notify , with due time and publicity, for a public hearing to be conducted in that area, to ascertain views of the affected families to be recorded and included in the Social Impact Assessment Report

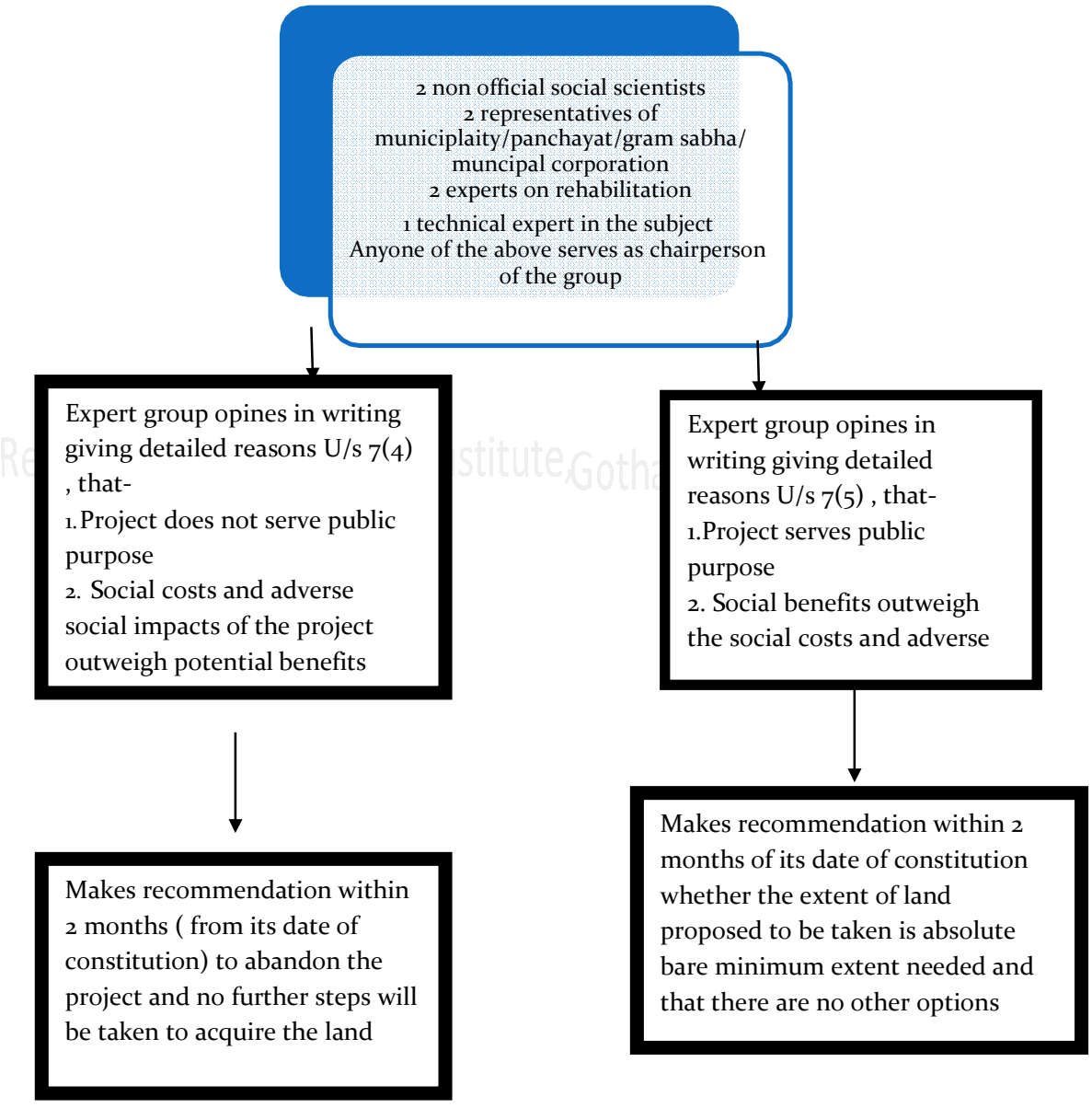
Publication of Social Impact Assessment Report U/s 6

Appropriate government to ensure that SIA study report and SIMP are made available in the local language to the relevant offices and published in the affected areas (locality) and website of the government in prescribed manner

if environmental impact assessment is being carried out, then a report of the SIA shall be made available to the agency carrying out the same. (Irrigation projects-Only EIA hence no SIA)

B. Appraisal of Social Impact Assessment report by an Expert Group-

Appropriate government to ensure that the SIA report is evaluated by an independent multi-disciplinary expert group U/s 7(1), which maybe constituted as follows-



These above mentioned recommendations to be made available in the local language to the panchayat/municipality/municipal corporation and all other relevant government offices as need be.

Examination of proposals for land acquisition and the Social Impact Assessment Report by appropriate government

The appropriate government shall ensure that-

1. There is a legitimate and bona fide public purpose for the proposed acquisition which necessitates the acquisition of the land identified

2. The potential benefits and the public purpose referred to shall outweigh the costs and adverse social impact as determined by the Social Impact Assessment study carried out

3. Only the bare minimum area of land required for the project is proposed to be acquired

4. There is no unutilized and which has been previously acquired in the area

5. The land, if any, acquired earlier remained unutilized, is used for such public purpose and make recommendations in respect thereof.

Relevance of SIA

SIA is the only mechanism today to address the impacts of acquisition on livelihoods of all those who don't own land but are still dependant on it. It is a prerequisite to formulate inclusive rehabilitation packages. Together SIA and the public hearing at gram sabhas are two facets of this act for ensuring a fair "right" to compensation and right to rehabilitation.

The Need for SIA

First, internationally, there is increased recognition for conducting SIA as a methodology to review the social impacts of infrastructure and other development interventions. According to the International Association for Impact Assessment, "Social impact assessment includes the processes of analysing, monitoring and managing the intended and unintended social consequences, both positive and negative, of planned interventions (policies, programs, plans, projects) and any social change processes invoked by those interventions.

Its primary purpose is to bring about a more sustainable and equitable biophysical and human environment."

SIA originated in the 1970s as a regulatory oversight mechanism, but increasingly, social impact assessment is being seen not as a regulatory hurdle but an important way of assessing business risk. SIA is often carried out as part of, or in addition to, environmental impact assessment.

Secondly, even within India, there is growing recognition of the need for SIA and the existence of policy precedents for the same. Since 2006, some aspects of the SIA as outlined in the LARR Act were being conducted as part of the environment impact assessment carried out pursuant to the EIA notification, 2006. Resettlement policies have lately made social

impact assessment a major part of the resettlement planning process.

For instance, in 2006, a provision was included for conducting SIA in the Orissa Rehabilitation and Resettlement Policy. The National Rehabilitation and Resettlement Policy, 2007 has made a provision for conducting SIA whenever a new project or expansion of an existing project is undertaken. But this provision is limited only to those cases, which involve displacement of 400 hundred or more families, *en masse* in plain areas, or two hundred or more families *en masse* in tribal or hilly areas.

The LARR Act, further mandates that the body conducting the SIA should prepare a Social Impact Management Plan, which outlines how this impact should be countered and addressed. Such a study is important for projects to be designed efficiently and equitably, and for them to be taken to completion without opposition from the affected families. Therefore, doing away with SIA completely for the vast majority of acquisitions may be politically expedient, but not ultimately desirable for ensuring sustainable, equitable and unopposed development. This is because unless the people displaced are stakeholders in the development process, they will not co-opt into the development process and allow it to proceed. After all stalled infrastructural and industrial activities benefit no one.

Conclusion

In the words of the American politician Jack Kemp, economic development doesn't mean anything if it leaves people out. The costs of development, industrialisation and forward growth of civilisations mean nothing when basic survival is threatened by displacement from people's original localities or, in other words, their homes. No civilisation can flourish at the cost of their fellow beings. Thus social impact assessment and the need to act on their recommendations and indicators are of paramount importance to the development narrative in a democratic way, which ensures people's rights to live in their own homes in their natural ways of living do not get trampled upon, thus ensuring a holistically developed society as a whole, and therefore conserving the image of a welfare state.

Public purpose

Section 2 of the Act provides for the application of the provisions of the Act to various types of land acquisitions. It classifies the acquisition of land into three categories:

(1) appropriate government acquire land for its own use and for public purposes;

(2) appropriate government acquires land for PPP projects/ for private companies for

public purpose;

(3) purchases by private companies through private negotiations.

According to the Section 3(za) of the Act, 'public purpose' means the activities specified under Section 2(1), and includes the following:

(a) strategic purposes relating to naval, military, air force, and armed forces of the Union, including central paramilitary forces or any work vital to national security or defence of India or State police, safety of the people; or

(b) infrastructure projects, which includes the following, namely:

(i) all activities or items listed in the notification of the Government of India in the Department of Economic Affairs (Infrastructure Section) number 13/6/2009-INF, dated the 27th March, 2012, excluding private hospitals, private educational institutions and private hotels;

(ii) projects involving agro-processing, supply of inputs to agriculture, warehousing, cold storage facilities, marketing infrastructure for agriculture and allied activities such as dairy, fisheries, and meat processing, set up or owned by the appropriate Government or by a farmers' cooperative or by an institution set up under a statute;

(iii) project for industrial corridors or mining activities, national investment and manufacturing zones, as designated in the National Manufacturing Policy;

(iv) project for water harvesting and water conservation structures, sanitation;

(v) project for Government administered, Government aided educational and research schemes or institutions;

(vi) project for sports, health care, tourism, transportation or space programme;

(vii) any infrastructure facility as may be notified in this regard by the Central Government and after tabling of such notification in Parliament;

(c) project for project affected families;

(d) project for housing for such income groups, as may be specified from time to time by the appropriate Government;

(e) project for planned development or the improvement of village sites or any site in the urban areas or provision of land for residential purposes for the weaker sections in rural and

urban areas;

(f) project for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by the Government, any local authority or a corporation owned or controlled by the State.

When the government acquires land for its own use, hold and control including for any Public Sector Undertaking (PSU) and for public purpose, the provisions of the Act relating to acquisition, compensation, rehabilitation and resettlement shall apply.

But where the government acquires land

(i) for public private partnership projects, where the ownership of the land continues to vest in the government, for public purpose and

(ii) for private companies for public purpose, the provisions of the Act relating to land acquisition, consent, compensation, rehabilitation and resettlement shall also apply.

Under the proviso to Section 2(b), in case of acquisition of land for public private partnership, the prior consent of at least 70% of the affected families is required and in case of acquisition of land for private companies, the prior consent of at least 80% of the affected families is required. Whereas, there is no requirement of prior consent in case the government acquires land for its own use, hold and control, including for Public Sector Undertaking.

Further when the government acquires land either

(i) for its own use… for a public purpose,

(ii) for a private company for a public purpose or

(iii) for public private partnership for a public purpose, all the provisions of the 2013 Act relating to land acquisition, compensation, rehabilitation and resettlement shall apply. That is, if the land is acquired by the government for a private company or for a public private partnership or for its own use, then provisions of land acquisition shall apply and compensation has to be paid and rehabilitation and resettlement of the parties shall also to be done. In case of a land acquired by the government for a public private partnership, the land continues to vest with the government.

Case law

The Supreme Court in ***State of Bombay Vs. R.S. Narji 1956 AIR 294*** has held that in each

case all the facts and circumstances will require to be closely examined in order to determine whether a public purpose has been established.

Public purpose is not capable of precise definition. Each case has to be considered in the light of the purpose for which acquisition is sought for. It is to serve the general interest of the community as opposed to the particular interest of the individual. Public purpose broadly speaking would include the purpose in which the general interest of the society as opposed to the particular interest of the individual is directly and vitally concerned. Generally the executive would be the best judge to determine whether or not the impugned purpose is a public purpose. Yet it is not beyond the purview of judicial scrutiny. The interest of a section of the society maybe public purpose when it is benefited by the acquisition. The acquisition in question must indicate that it was towards the welfare of the people and not to benefit a private individual or group of individuals joined collectively. Therefore, acquisition for anything which is not for a public purpose cannot be done compulsorily - ***Manimegalai Vs. The Special Tahsildar(Land Acquisition Officer) Adi Dravidar Welfare, AIR 2018 SC 2020***

In ***Somawanti Vs. State of Punjab 1963 AIR 151*** the Supreme Court has an occasion to consider the true import of expression "public purpose" in the context of the provisions of the Land Acquisition Act. After main a reference to the definition clause where the expression "public purpose" is defined, the Supreme Court observed as under:

> “This is an inclusive definition and not a compendious one and therefore, does not assist us very much in ascertaining the ambit us very much in ascertaining the ambit of the expression 'public purpose'. Broadly speaking the expression' public purpose' would, however, include a purpose in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned.”
>
> “Hence the expression "public purpose" would include purpose in which the general interest of the community as opposed to the particular interest of the individual is directly or vitally concerned. Whatever furthers the general interest of the community as opposed to the particular interest of the individual must be regarded as public purpose. Thus scope of the expression is obviously not static and must change with varying concept, time, state of society and its needs. Therefore, the proper approach is to consider the

scheme as a whole and then examine whether the entire scheme of acquisition is for a public purpose of not. It will be an entirely wrong approach to pick up a stray item or clause out of the scheme and then say that the said clause is not actuated by public purpose. The phrase "public purpose" will have to be construed according to the spirit of the times and the needs of the society. The question will have to be decided in each case on the touchstone as to whether the acquisition is in the interest of community or section of society as distinguished from private interest of an individual."

Synopsis of Topic

- *Importance of food security*
- *Special provision to safeguard food security*

Provision to Safeguard Food Security

Importance of food security

Most of our food comes from land. As per World Bank statistics through 2010-2014, 60.3 percent of the total land in India was agricultural land, though the trend is declining. Reportedly 70 percent of India's population depends on agriculture for their livelihood.

Food security as per the NFS Act means 'the supply of the entitled quantity of food grains and meals as specified' in the law. The food grains whether rice, wheat or millets, need land on which to be sown and grown.

We need a food policy, which envisions the country's future land needs for feeding its people. A land law and policy ought to complement that vision. In the recent past policy has encouraged Indian industry to seek cultivable land overseas (such as in African states), though the government does not admit it as a food security strategy.

According to the Food and Agriculture Organisation (FAO) agricultural land is that which is arable – cultivable and suitable for growing crops, plus that on which there are either permanent crops or which is under permanent pasture. The LARR Act, 2013 gives an even more broad definition of 'agricultural land'. Securing such land (from any non-agricultural use) means securing food supplies.

Special provision to safeguard food security

Sec.10 of the RFCTLARR Act, 2013 envisages safeguard food security. Sec.10 states as

follows:

1. Multi-crop irrigated land will not be acquired except as a demonstrably last resort measure, which in no case should lead to acquisition of more than the limits which have been set by the State Govt. under this law.

2. Wherever multi-crop irrigated land is acquired an equivalent are of culturable waste land shall be developed for agricultural purposes or an amount equivalent to the value of the land acquired should be deposited with the appropriate Govt. for investment in agriculture for enhancing food security.

3. States are also required to set a limit on the area of agricultural land that can be acquired in any given District.

However the provisions of Sec.10 do not apply in case of projects which are linear in nature such as those relating to railways, highways, major District roads, irrigation canals, power lines and the like

Synopsis of Topic

- *Publication of preliminary notification and power of officers*
- *Preliminary survey of land and power of officers to carry out survey*
- *Payment for damage*
- *Hearing of objections*
- *Case law*

Notification & Acquisition

Publication of preliminary notification and power of officers

Sec.11 of the RFCTLARR Act, 2013 envisages for publication of preliminary notification along with details of the land to be acquired in rural and urban areas and powers of officers thereupon.

Sec.11 states that whenever, it appears to the appropriate Government that land in any area is required or likely to be required for any public purpose, a notification (preliminary notification) to that effect along with details of the land to be acquired in rural and urban areas should be published in the following manner, namely

(a) in the Official Gazette;

(b) in two daily newspapers circulating in the locality of such area of which one shall be in the regional language;

(c) in the local language in the Panchayat, Municipality or Municipal Corporation, as the case may be and in the offices of the District Collector, the Sub-divisional Magistrate and the Tehsil;

(d) uploaded on the website of the appropriate Government;

(e) in the affected areas, in such manner as may be prescribed.

After issuance of the said notification the concerned Gram Sabha or Sabhas municipalities and the Autonomous Councils in case of the areas referred to in the Sixth Schedule to the Constitution, should be informed of the contents of such notification in all cases of land acquisition at a meeting called especially for this purpose.

Such a notification should also contain a statement on the nature of the public purpose involved, reasons necessitating the displacement of affected persons, summary of the Social Impact Assessment Report and particulars of the Administrator appointed for the purposes of rehabilitation and resettlement.

Once when a notification is issued no person should make any transaction or create any encumbrances on the land specified in such notification from the date of its publication till the land acquisition proceedings are completed.

If any person wilfully violates this and enters into any transaction regarding the land which has been mentioned in the notification the Collector is not be liable to make good the loss

However in special circumstances the Collector is empowered to exempt such land from the operation of this subsection, on the application made by the owner of the land so notified such owner.

After issuance of notification, but before the issuance of a declaration, the Collector should undertake and complete the exercise of updating of land records within a period of two months.

The purpose of the notification under Sec.4(1) of the Act is to give a notice to the persons who are likely to be affected by the proposed acquisition of the land in question, so that they may file objections if they so desire the locality in the notification under Sec.4(1) of the Act, therefore must be described in such a manner as to give reasonable notice to all persons in that locality whose land or whose interest in the land sought to be acquired will be or its likely to be affected – ***Bahori Lal Vs. Land Acquisition Officer AIR 1970 All. 414.***

The proceedings for acquisition start with a preliminary notification under Sec.4. By that notification the Government notifies that land in any locality is needed or is likely to be needed for any public purpose. On that notification certain consequences follow and authority is conferred on an officer either generally or specially by Government and on his servants and workmen to enter upon and survey and take levels of any land in such locality, to dig or bore into the sub-soil, to do all other acts necessary to ascertain whether the land is adapted for such purpose, to set out the boundaries of the land proposed, to be taken, and so on – ***Nandeshwar Prasad Vs. Uttar Pradesh Govt., AIR 1964 SC 1217***

Mere publication in the newspaper satisfies the requirement of publication required mandatorily under Sec.4 without which there will be infraction of Sec.4(1) and as such the

publication in the newspaper even if it is before the gazette is published will be a publication required under Sec.4(1) and it loses none of its importance and is one of the factors requiring mandatory compliance under Sec.4(1). As such release of such publication in the newspaper for the purpose of submitting objection would be equally important and cannot be said to *non est* or premature – ***Kolkata Metropolitan Development Authority Vs. Mahendra Nath Memorial Society, AIR 2005 NOC 359 (Cal) 143***

Preliminary survey of land and power of officers to carry out survey

Once when a notification has been made by the appropriate Govt. u/Sec.11 the appropriate Govt. is empowered u/Sec.12 to determine the extent of land and towards this end any officer or his servants or workmen who have been authorised by the such Govt. has the power:

a) to enter upon and survey and take levels of any land in such locality.

b) to dig or bore into the subsoil

c) to do all acts necessary to ascertain whether the land is adapted for such purposes;

d) to set out the boundaries of the land proposed to be taken and the intended line of work proposed to be made thereon and

e) to mark such levels boundaries and line by placing marks and cutting trenches and where otherwise the survey cannot be completed and the levels taken and the boundaries and the line marked to cut down and clear away any part of any standing crop, fence or jungle.

All of the aforesaid activities should be conducted in the presence of either the owner of the land himself or any person authorised in writing by the owner.

By giving a notice of at least sixty days prior to the said survey activities the owner has to be afforded a reasonable opportunity to be present during the survey and despite such notice if the owner defaults to be present on the land in that case the said survey activities can be conducted in his absence.

In conducting the aforesaid activities no person should enter into any building or upon any enclosed Court or garden attached to a dwelling-house without previously giving such occupier at least seven days' notice in writing of his intention to do so.

Payment for damage

In conducting any of the survey activities enumerated under Sec.12 if any damage is caused

then the officer is empowered to pay or tender payment for the damage and if there is any dispute as to the sufficiency of such amount the officer should refer the dispute to the Deputy Commissioner and his decision will be final in this regard.

Hearing of objections

Sec.15 of the RFCTLARR Act, 2013 envisages hearing of objections of any person who is interested in any land which has been notified for acquisition.

The Section provides that within 60 days from the date of notification if any person who is interested in any land which has been notified as being required for any public purpose is at liberty to raise objections as to:

a) the area and suitability of land proposed to be acquired;

b) justification offered for public purpose;

c) the findings of the SIA

Such objections should be made to the Collector in writing and the Collector is bound to give a reasonable opportunity of being heard to the person raising such objections or any person authorised by him in this behalf or his Advocate.

After hearing all such objections and after making such further inquiry the Collector should make a report in respect of the land which has been notified and send it to the appropriate Govt. along with his recommendations on the objections so raised and the record of the proceedings held by him along with a separate report giving therein the approximate cost of land acquisition, particulars as to the number of affected families likely to be resettled for the decision of the Govt.

The decision of the appropriate Govt. on the objections will be final.

Case law

In ***Women's Education Trust & Anr Vs. State of Haryana & Others*** the following principles were established w.r.t. hearing of objections:

(i) Before depriving any person of his land by compulsory acquisition, an effective opportunity must be given to him to contest the decision taken by the State Government/competent authority to acquire the particular parcel of land.

(ii) Any person interested in the land, which has been notified can file objections and show

that the purpose specified in the notification is really not a public purpose or that in the guise of acquiring the land for a public purpose the appropriate Government wants to confer benefit upon private persons or that the decision of the appropriate Government is arbitrary or is vitiated due to mala fides.

(iii) In response to the notice issued by the Collector, the objector can make all possible endeavors to convince the Land Acquisition Collector that the acquisition is not for a public purpose specified in the notification issued, that his land is not suitable for the particular purpose; that other more suitable parcels of land are available, which can be utilized for execution of the particular project or scheme.

(iv) The Collector is duty bound to objectively consider the arguments advanced by the objector and make recommendations, duly supported by brief reasons, as to why the particular piece of land should or should not be acquired and whether the plea put forward by the objector merits acceptance. In other words, the recommendations made by the Collector should reflect objective application of mind to the entire record including the objections filed by the interested persons.

(v) The Collector is required to submit his report and the recommendations to the State Government along with the record of proceedings to enable the latter to take final call on the desirability, propriety and justification for the acquisition of the particular parcel(s) of land.

(vi) The declaration can be issued only if the appropriate Government, on an objective application of mind to the objections filed by the interested persons including the landowners and the report of the Land Acquisition Collector, is satisfied that the land is needed for the particular purpose specified in the notification.

In ***Navneet Ram Vs. State of Uttar Pradesh, AIR, 1975 SC 2144*** it was held by the Supreme Court that where the land proposed to be acquired is specifically mentioned in the notification it is only the persons interested in that land who is entitled to be heard under Sec.5-A. Thus a person having no right, title and interest in the land sought to be acquired has no *locus standi* to file an objection and question the validity of the acquisition of the land.

Synopsis of Topic

- *Rehabilitation and Resettlement award for affected families by Collector*
- *Provision of infrastructural amenities in resettlement area*
- *Powers of the Collector*
- *Power to make corrections to awards*
- *Power to adjourn enquiry*
- *Power to summon and enforce attendance of witnesses and production of documents*
- *Power to call for records*
- *Power to take possession of land to be acquired*
- *Awards of Collector when to be final*
- *Power to pay additional compensation in case of multiple displacements*
- *Special powers in case of urgency to acquire land in certain cases*

Rehabilitation & Resettlement Award

Rehabilitation and Resettlement award for affected families by Collector

Sec.31 empowers the Collector to pass Rehabilitation and Resettlement Award for each family affected by the land acquisition in terms of the entitlements provided in the second schedule.

Such Rehabilitation and Resettlement award should include the following:

a) rehabilitation and resettlement amount payable to the family;

b) bank account number of the person to which the rehabilitation and resettlement award amount is to be transferred;

c) particulars of house site and house to be allotted, in case of displaced families;

d) particulars of land allotted to the displaced families;

e) particulars of one time subsistence allowance and transportation allowance in case of displaced families;

f) particulars of payment for cattle shed and petty shops;

g) particulars of one-time amount to artisans and small traders;

h) details of mandatory employment to be provided to the members of the affected families;

i) particulars of any fishing rights that may be involved;

j) particulars of annuity and other entitlements to be provided;

k) particulars of special provisions for the Scheduled Castes and the Scheduled Tribes to be provided.

In case any of the matters specified under clauses (a) to (k) are not applicable to any affected family the same should be indicated as not applicable.

Further by way of notification the appropriate Government has the power to increase the rate of rehabilitation and resettlement amount payable to the affected families, taking into account the rise in the price index.

Provision of infrastructural amenities in resettlement area

In every resettlement area as defined under this Act, the Collector is entrusted with the duty to ensure the provision of all infrastructural facilities and basic minimum amenities.

Powers of the Collector

1. Power to make corrections to awards

Under Sec.33(1) the Collector is empowered to correct any clerical or arithmetical mistakes in either of the awards or errors either on his own motion or on the application of any person interested or local Authority. This can be done at any time, but not later than six months from the date of award or before making reference to the Authority under Sec.64

But any correction which is likely to affect any person prejudicially should not be made unless such person has been given a reasonable opportunity of making representation in the matter.

The Collector should give immediate notice of any correction made in the award so corrected to all the persons interested.

Where any excess amount is proved to have been paid to any person as a result of such correction the excess amount so paid is to be refunded by the recipient and in the case of any

default or refusal to pay, the same may be recovered from such person.

Case law

Once the award is passed, there is no question of any correction in the notification under Sec.4(1)(Sec.11 in RFCTLARR Act, 2013) or declaration under Sec.6 of the Act. The Act under Sec.13A(Sec.33 in RFCTLARR Act, 2013) provides for correction of clerical mistakes in the award and that too only within six months. There is no question of an award being passed in respect of a property, for which there is no notification and consequently declaration – ***State of UP Vs. Abdul Ali, (2017) 3 SCC 108***

2. Power to adjourn enquiry

The Collector has the power to adjourn the enquiry to a day to be fixed by him for any cause he thinks fit.

Case law

It was held in ***Secretary of State Vs. Sohan Lal (1918) 60 P.R.,*** that the mere circumstance that the claim was not made upon the date fixed in the notice does not deprive Collector of jurisdiction to entertain it. Every Court and every officer exercising quasi-judicial functions has an inherent jurisdiction and power to grant adjournment

3. Power to summon and enforce attendance of witnesses and production of documents

For the purpose of making enquiries the Collector has the powers to summon and enforce the attendance of witnesses, including the parties interested and to compel the production of documents in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908).

4. Power to call for records

At any time before the award is made by the Collector the appropriate Government is empowered to call for any record of any proceedings (whether by way of inquiry or otherwise) for the purpose of satisfying itself about the legality or propriety of any findings or order passed or as to the regularity of such proceedings and may pass such order or issue such direction in that regard. But the appropriate Government should not pass or issue any order or direction prejudicial to any person without affording such person a reasonable opportunity of being heard.

5. Power to take possession of land to be acquired

The Collector has the power u/Sec.38 to take possession of land after ensuring that full payment of compensation as well as rehabilitation and resettlement entitlements are paid to the entitled persons within a period of three months for the compensation and a period of six months for the monetary part of rehabilitation and resettlement entitlements within the date of award.

But the components of the Rehabilitation and Resettlement Package relating to infrastructural entitlements should be provided within a period of eighteen months from the date of the award.

Further in case of acquisition of land for irrigation or hydel project, the rehabilitation and resettlement should be completed six months prior to submergence of the lands acquired.

The Collector is responsible for ensuring the rehabilitation and resettlement process is completed in all its aspects before displacing the affected families.

Power to pay additional compensation in case of multiple displacements

The Collector should not displace any family which has already been displaced for the purpose of acquisition and if so displaced should pay an additional compensation equivalent to that of the compensation determined for the second or successive displacements.

Special powers in case of urgency to acquire land in certain cases

In cases of urgency, the Collector has the power to take possession of any land needed for a public purpose and such land shall thereupon vest absolutely in the Government, free from all encumbrances.

But to exercise this power a notice under Sec.21 should be issued and published and upon the expiration of thirty days from the publication of such notice the possession of the land can be taken

The powers of the appropriate Government in this regard are restricted to:

a) the minimum area required for the defence of India or

b) national security or

c) for any emergencies arising out of natural calamities or

d) any other emergency with the approval of Parliament.

The Collector should not take possession of any building or part of a building without giving

to the occupier at least forty-eight hours notice of his intention to do so, a longer notice to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

Before taking possession of any land under this provision the Collector should tender payment of 8(eight) per cent of the compensation for such land as estimated by him to the person interested entitled.

In the case of any land to which is to be acquired as aforesaid the appropriate Government may direct that any or all of the provisions as to determination of social impact and public purpose and procedure and manner of Rehabilitation and Resettlement will not apply and if it does so a declaration may be made in respect of such land at any time after the date of the publication of the preliminary notification.

An additional compensation of 75(seventy five) per cent of the total compensation should be paid by the Collector in respect of land and property for acquisition of which proceedings have been initiated as above.

However no additional compensation will be required to be paid in case the project is one that affects:

a) the sovereignty and integrity of India,

b) the security and strategic interests of the State or

c) the relations with foreign States.

Awards of Collector when to be final

Once when the Collector makes an award it will be conclusive evidence, as between the Collector and the persons interested as to the:

a) true area of the land

b) market value of the land

c) assets attached thereto

d) solatium

e) apportionment of the compensation among the interested persons.

After the award has been made the Collector should give immediate notice of his awards to such of the persons interested who are not present personally or through their representatives

when the awards are made.

Besides the Collector is required to keep open to the public and display a summary of the entire proceedings undertaken in a case of acquisition of land including the amount of compensation awarded to each individual along with details of the land finally acquired on the website created for this purpose.

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UNIT-2

SYNOPSIS OF UNIT

- National Monitoring Committee for Rehabilitation and Resettlement
- Land Acquisition Rehabilitation and Resettlement Authority
- Apportionment of Compensation
- Payment of Compensation
- Bibliography

Synopsis of Topic

- *Establishment*
- *Reporting requirements*

National Monitoring Committee for Rehabilitation and Resettlement

Establishment

Sec.48 provides for the establishment of National Monitoring Committee for Rehabilitation and Resettlement by the Central Govt. for national and inter-State projects for the purpose of reviewing and monitoring the implementation of Rehabilitation and Resettlement schemes or plans under the Act.

The National Monitoring Committee for Rehabilitation and Resettlement is allowed to associate with eminent experts from relevant fields in addition to the representation of the concerned ministries and departments of the central and State Govt.

Reporting requirements

With respect to the matters covered under the RFCTLARR Act, 2013 the states and Union Territories should provide relevant information to the Committee from time to time and as and when required.

Establishment of State monitoring committee for Rehabilitation and Resettlement

Under Sec. 50 the State Govt. is required to constitute a State monitoring committee for reviewing and monitoring the implementation of Rehabilitation and Resettlement schemes or

plans

This State Monitoring Committee for Rehabilitation and Resettlement is allowed to associate with eminent experts from relevant fields in addition to the having representatives of the concerned ministries and departments of the central and State Govt.

This committee is provided with the necessary officers and other employees by the Govt. for efficient functioning.

Synopsis of Topic

- *Establishment*
- *Composition of Authority*
- *Qualifications for appointment as Presiding Officer*
- *Terms of office of Presiding Officer*
- *Staff of Authority*
- *Salary and allowances and other terms and conditions of service of Presiding Officers*
- *Filling up of vacancies*
- *Resignation and removal*
- *Orders constituting Authority to be final and not to invalidate its proceedings*
- *Powers of Authority and procedure before it*
- *Proceedings before Authority to be judicial proceedings*
- *Members and officers of Authority to be public servants*
- *Jurisdiction of civil courts barred*
- *Reference to Authority*
- *Collector's statement to Authority*
- *Service of notice by Authority*
- *Restriction on scope of proceedings*
- *Proceeding to be in public*
- *Determination of award by Authority*
- *Form of award*
- *Costs*
- *Collector may be directed to pay interest on excess compensation*
- *Re-determination of amount of compensation on the basis of the award of the Authority*

- *Appeal to High Court*

Land Acquisition Rehabilitation and Resettlement Authority

Establishment

Sec.51 envisages the establishment of Land Acquisition, Rehabilitation and Resettlement Authority

By way of a notification the appropriate Government has the power to establish one or more Authorities to be known as the Land Acquisition, Rehabilitation and Resettlement Authority to exercise jurisdiction, powers and authority conferred on it for the purpose of providing speedy disposal of disputes relating to:

a) land acquisition

b) compensation

c) rehabilitation and resettlement

The appropriate Government should specify in the notification the areas within which the Authority is to exercise jurisdiction for entertaining and deciding the references made to it or applications made by the applicant.

Composition of Authority

The Authority consists of only one person to be known as the Presiding Officer.

The appropriate Government can authorise the Presiding Officer of one Authority to discharge the functions of the Presiding Officer of another Authority also.

Qualifications for appointment as Presiding Officer

To be appointed as the Presiding Officer of an Authority a person should have been

a) District Judge; or

b) a qualified legal practitioner for not less than seven years.

A Presiding Officer is appointed by the appropriate Government in consultation with the Chief Justice of a High Court in whose jurisdiction the Authority is proposed to be established.

Terms of office of Presiding Officer

The Presiding Officer of an Authority will hold the office for a term of three years from the

date on which he enters upon his office or until he attains the age of sixty-five years, whichever is earlier.

Staff of Authority

The Authority is provided with a Registrar and other officers and employees.

The Registrar and other officers and employees of the Authority discharge their functions under the general superintendence of the Presiding Officer.

Salary and allowances and other terms and conditions of service of Presiding Officers

The Presiding Officer of an Authority will have salary and allowances and the other terms and conditions of service (including pension, gratuity and other retirement benefits)

Neither salary and allowances nor the other terms and conditions of service of the said Presiding Officers are to be varied to their disadvantage after appointment.

Filling up of vacancies

If, for any reason other than temporary absence, any vacancy occurs in the office of the Presiding Officer of an Authority the appropriate Government has the power to appoint another person to fill the vacancy and the proceedings will continue before the Authority from the stage at which the vacancy is filled.

Resignation and removal

The Presiding Officer of an Authority resign his office by giving a notice in writing under his hand and addressed to the appropriate Government

The Presiding Officer should continue to hold office until:

(a) the expiry of three months from the date of receipt of such notice or

(b) until a person duly appointed as his successor enters upon his office or

(c) until the expiry of his term of office, whichever is earlier

until and unless he is permitted by the appropriate Government to relinquish his office sooner.

The Presiding Officer of an Authority should not be removed from his office except by an order made by the appropriate Government on the ground of proven misbehaviour or incapacity after inquiry in the case of the Presiding Officer of an Authority made by a Judge

of a High Court in which the Presiding Officer concerned has been informed of the charges against him and given a reasonable opportunity of being heard in respect of these charges.

By way of rules the appropriate Government has the power to regulate the procedure for the investigation of misbehaviour or incapacity of such Presiding Officer.

Orders constituting Authority to be final and not to invalidate its proceedings

Order of the appropriate Government appointing any person as the Presiding Officer of an Authority should not be called in question in any manner, and no act or proceeding before an Authority should be called in question in any manner on the ground of mere defect in the constitution of an Authority.

Powers of Authority and procedure before it

For the purposes of its functions the Authority has the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) discovery and production of any document or other material object producible as evidence;

(c) receiving evidence on affidavits;

(d) requisitioning of any public record;

(e) issuing commission for the examination of witnesses;

(f) reviewing its decisions, directions and orders;

(g) any other matter which may be prescribed.

The Authority has original jurisdiction to adjudicate upon every reference made to it

The Authority should not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908) but should be guided by the principles of natural justice and the Authority also has the power to regulate its own procedure.

The Authority after receiving reference and after giving notice of such reference to all the parties concerned and after affording opportunity of hearing to all parties should dispose of such reference within a period of six months from the date of receipt of such reference and make an award accordingly.

The Authority should arrange to deliver copies of the award to the parties concerned within a period of fifteen days from the date of such award.

Proceedings before Authority to be judicial proceedings

All proceedings before the Authority should be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Authority should be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

Members and officers of Authority to be public servants

The Member and officers of the Authority are deemed to be public servants within the meaning of Sec.21 of the Indian Penal Code (45 of 1860).

Jurisdiction of civil courts barred

Civil court (other than High Court under article 226 or article 227 of the Constitution or the Supreme Court) don't have jurisdiction to entertain any dispute relating to land acquisition in respect of which the Collector or the Authority is empowered to deal and no injunction should be granted by any court in respect of any such matter.

Reference to Authority

By written application to the Collector any interested person who has not accepted the award may demand that the matter be referred by the Collector for the determination of the Authority, his objection regarding

(a) the measurement of the land,

(b) the amount of the compensation,

(c) the person to whom it is payable,

(d) the rights of Rehabilitation and Resettlement or

(e) the apportionment of the compensation among the persons interested

However the Collector should make a reference to the appropriate Authority within a period of thirty days from the date of receipt of such application

Further where the Collector fails to make such reference within the said period, the applicant is at liberty to apply to the Authority, requesting it to direct the Collector to make the reference to it within a period of thirty days.

Such an application should state the grounds on which the objection to the award is taken.

Every such application should be made

(a) person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector‘s award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 21, or within six months from the date of the Collector‘s award, whichever period will first expire.

Further the Collector has the power to entertain an application after the expiry of the said period but within a further period of one year, if he is satisfied that there was sufficient cause for not filing it within the period specified

Collector’s statement to Authority

In making the reference, the Collector should state for the information of the Authority, in writing under his hand

(a) the situation and extent of the land, with particulars of any trees, buildings or standing crops thereon;

(b) the names of the persons whom he has reason to think interested in such land;

(c) the amount awarded for damages and paid or tendered under section 13, and the amount of compensation awarded under the provisions of this Act;

(d) the amount paid or deposited under any other provisions of this Act; and

(e) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

Such statement should be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by the persons interested respectively.

Service of notice by Authority

The Authority should cause a notice specifying the day on which it will proceed to determine the objection, and direct their appearance before the Authority on that day, to the following persons:

(a) the applicant;

(b) all persons interested in the objection, except such of them as have consented without protest to receive payment of the compensation awarded; and

(c) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

Restriction on scope of proceedings

The scope of the enquiry in every such proceeding should be restricted to a consideration of the interest of the persons affected by the objection.

Proceeding to be in public

Every such proceeding should take place in public, and all persons entitled to practice in any Civil Court in the State are be entitled to appear, plead and act in such proceeding.

Determination of award by Authority

In determining the amount of compensation including the Rehabilitation and Resettlement entitlements, the Authority should take into consideration whether or not the Collector has followed the parameters set out.

In addition to the market value of the land as provided the Authority has the power to award an amount calculated at the rate of twelve per cent per year on the market value for the period from the date of the publication of the preliminary notification to the date of the award of the Collector or the date of taking possession of the land.

In computing such period any period during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court should be excluded.

In addition to the market value of the land as provided above the Authority should award a solatium of one hundred per cent over the total compensation amount.

Form of award

Every award should be in writing signed by the Presiding Officer of the Authority and should specify the amount awarded together with the grounds of awarding the said amount.

Every such award should be deemed to be a decree and the statement of the grounds of every such award a judgment under Code of Civil Procedure.

Costs

Every such award should also state the amount of costs incurred in the said proceeding, and by what persons and in what proportions they are to be paid.

When the award of the Collector is not upheld, the cost should be ordinarily paid by the Collector, unless the Authority concerned is of the opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deduction from his costs should be made or that he should pay a part of the Collector‘s costs.

Collector may be directed to pay interest on excess compensation

If the sum, which in the opinion of the Authority concerned, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Authority concerned may direct that the Collector should pay interest on such excess at the rate of nine per cent per annum from the date on which he took possession of the land to the date of payment of such excess into Authority

The award of the Authority concerned may also direct that where such excess or any part thereof is paid to the Authority after the date or expiry of a period of one year from the date on which possession is taken, interest at the rate of fifteen per cent per annum should be payable from the date of expiry of the said period of one year on the amount of such excess or part which has not been paid into Authority before the date of such expiry.

Re-determination of amount of compensation on the basis of the award of the Authority

Where in an award the Authority concerned gives the applicant any amount of compensation in excess of the amount awarded by the Collector the persons interested in all the other land covered by the same preliminary notification and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector, by written application to the Collector within three months from the date of the award of the Authority concerned require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Authority.

On receipt of the said application the Collector is duty bound to conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being heard, and make an award determining the amount of compensation payable to the applicants.

By making a written application to the Collector any person who has not accepted the award is at liberty to require that the matter be referred by the Collector for the determination of the Authority concerned.

Appeal to High Court

The Requiring Body or any person aggrieved by the Award passed by an Authority is at liberty to file an appeal to the High Court within sixty days from the date of Award.

If it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within such period the High Court has the power to allow the appeal to be filed within another sixty days.

Every such appeal should be heard expeditiously and endeavour should be made to dispose of such appeal within six months from the date on which the appeal is presented to the High Court.

Synopsis of Topic

- **Apportionment of Compensation**
  - *Particulars of apportionment to be specified*
  - *Dispute as to apportionment*
- **Payment of Compensation**
  - *Payment of compensation or deposit of same in Authority(Sec.77)*
  - *Investment of money deposited in respect of lands belonging to person incompetent to alienate*
  - *Investment of money deposited in other cases*
  - *Payment of interest*

Apportionment of Compensation

Particulars of apportionment to be specified

When there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment should be specified in the award, and as between such persons the award will be conclusive evidence of the correctness of the apportionment.

Case law

The expression 'as between such persons' will not bind persons who are not before the Collector or the Court making the award – ***Hurmutjan Bibi Vs. Padma Lochun Das, ILR 12 Cal 33***

Dispute as to apportionment

When the amount of compensation has been settled, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such disputes to the Authority.

Case law

The Collector is not authorised to decide finally the conflicting rights of the persons interested in the amount of compensation, he is primarily concerned with the acquisition of the land. In determining the amount of compensation which may be offered, he has to apportion the amount of compensation between the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have appeared before him. But the scheme of apportionment by the Collector does not finally determine the rights of the persons interested in the amount of compensation. The award is only conclusive between the Collector and the persons interested and not among the persons interested. The Collector has no power to finally adjudicate upon the title to compensation – ***Dr.G.H. Grant Vs. State of Bihar AIR 1966 SC 237***

The present suit has been filed for declaration and rendition of account which obviously could not be a matter of adjudication before the Land Acquisition Court. Such a matter cannot be decided in terms of Section 30(Sec.76 of RFCTLARR Act, 2013) of the Land Acquisition Court. Section 30 of the Land Acquisition Act deals with the determination of dispute relating to apportionment of compensation. As per Section 30 of the Land Acquisition Act, 1894, in case there is a dispute with regard to apportionment of compensation or any part thereof, or as to the person to whom the same or any part thereof is payable, the Collector is to refer such a dispute to the decision of the Court. In the present case, the plaintiffs suit is for declaration to the effect that he is owner of 1/4th share in the land and he is entitled to possession to the extent of his share and for rendition of account. The declaration sought could be granted by a civil court alone. Similarly, the claim for rendition of account cannot be subject matter of adjudication under Section 30 of the Land Acquisition Act – ***Gurtej Singh Vs. Jagan Nath, 1996, LACC, 66***

The jurisdiction of the Court in a reference made under Sec.30 is confined strictly to the consideration of the dispute that is expressly referred to it by the Collector. The Court has no power to extend the scope of the reference or to question any portion of the award which has become final – ***Rana Dahal Jung Vs. Rani Smt. Hem Kumari Devi, AIR 1960 Tripura 18***

Payment of Compensation

Payment of compensation or deposit of same in Authority (Sec.77)

On making an award the Collector should tender payment of the compensation awarded by

him to the persons interested and should pay it to them by depositing the amount in their bank accounts unless prevented by someone or some contingencies like:

i. If the person entitled to compensation has not consented to receive it or

ii. If there be no person competent to alienate the land or

iii. If there be any dispute as to the title to receive the compensation or as to the apportionment of it.

In the aforesaid circumstances the Collector should deposit the amount of the compensation in the Authority.

Any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount.

Further no person who has received the amount otherwise than under protest is entitled to make any application to the Authority.

Case law

It is well settled that if the entitlement as well as the liability are prescribed by law and the procedure, mode and manner for working out the same are also prescribed, then the statutory authority can act only in the manner so provided by the statute, any other manner being impermissible to be followed. We do not find in the text of the Land Acquisition Act, 1894 any authority in the collector to consign the compensation in the Government Treasury, as is done in the present case, with a rider that cash allowance should be paid to the trustees upon recommendation by the Tahsildar routed through the collector. Such a direction on the face of it is ultra vires the provisions of Sec.31(1)(Sec.77(1) of RFCTLARR Act, 2013) of the Land Acquisition Act and must be treated as *non est*. For all purposes, the collector is bound, in the case of class of persons who are not competent to alienate the land, to deposit the amount of compensation in the court to which a reference u/s. 18 would be submitted. In no other manner he can get a statutory discharge by payment of compensation with regard to the property belonging to such class of persons – ***Govardhandhari Devasthan, Kopargaon Vs. Collector of Ahmednagar, 1982 Mah.L.J. 390***

Investment of money deposited in respect of lands belonging to person incompetent to alienate

If any money is deposited in the Authority concerned and it appears that the land for which

compensation was awarded belonged to any person who had no power to alienate the same, the Authority concerned should:

a) order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money should have been deposited was held; or

b) if such purchase cannot be effected forthwith, then in such Government of other approved securities

and should also direct the payment of the interest or other proceeds arising from such investment to the person or persons who would have been entitled to the possession of the said land, and such moneys should remain so deposited and invested until the same is applied

(i) in the purchase of such other lands as aforesaid; or

(ii) in payment to any person or persons becoming absolutely entitled.

In all cases of money deposited the Authority concerned should order the costs of the following matters, including therein all reasonable charge and incidental expenses, to be paid by the Collector, namely:

a. the costs of such investments as aforesaid;

b. the costs of the orders for the payment of the interest or other proceeds of the securities upon which such moneys are for the time being invested, and for the payment out of the Authority concerned of the principal of such moneys, and of all proceedings relating thereto, except such as may be occasioned by litigation between adverse claimants.

Case law

As was pointed out by Sir George Jessol, M.R. in Kelland v. Fulford (1877) 6 Ch. D. 491 : 47 L.J. Ch. 94 : 25 W.R. 606, when land has beer converted into, money by reason of proceedings under, the Lands Clauses Act, the money remains impressed with the character of real estate see also *ex parte* Walker (1853) 1 Drewry 508; In re Harrop's Estate (1857) 3 Drewry 726. In other words, till the money passes into the hands of a person absolutely entitled thereto, there is a constructive reconversion of it into land. To put the matter in another way, Sec.32 (Sec.78 of RFCTLARR Act, 2013) makes it reasonably plain that, although an owner may be deprived of his land for the sake of public purposes, the

Legislature intended that the protection enjoyed by reversionary heirs, when land is in the hands of limited owners, should not, by reason of the acquisition alone, be completely withdrawn. This object would be defeated if upon the conversion of the land into money, the limited owner was allowed to seize the fund and to deal with it as absolute owner. If such a state of things was tolerated, the possibility would not, by any means, be too remote, that the ultimate owners may be deprived of the use of the fund upon the termination of the limited estate – ***Mrinalini Dasi Vs. Abinash Chandra Dutt, (1910) 14 CWN 1024***

Investment of money deposited in other cases

Sec.79 of RFCTLARR Act, 2013 envisages that when any money is required to be deposited in the Authority for any cause the Authority may, order that the same be invested in Government or approved securities and be paid in a manner where parties are benefitted from it as they might have been benefitted from the land for which land such money should have been deposited. However this can be done only on the application of any party interested or claiming an interest in such money.

Payment of interest

When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector should pay the amount awarded with interest at the rate of 9% per annum from the time of so taking possession until it should have been so paid or deposited.

If such compensation is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of 15% per annum should be paid from the date or expiry of the said period on the amount of compensation which has not been paid or deposited before the date of such expiry.

Case law

So far as interest on the value of the acquired area of the land is concerned we may point out that Sec.34(Sec.80 of RFCTLARR Act, 2013) of the Act contains a mandatory provision inter alia providing that when the amount of compensation is not paid on or before taking possession of the acquired land, the Collector shall pay interest from the date of taking over possession. The payment of interest is not dependant on any claim of the person whose land has been acquired. There can be no controversy or any lis between the parties regarding the payment of interest. Once the provisions of Sec.34 of the Act are attracted it is obligatory on

the Collector to pay interest and if he fails to pay the same, it can be claimed from the Court in proceedings under Sec.18(Sec.64 of RFCTLARR Act, 2013) of the Act or even from the appellate Court thereafter – ***Osman Khan Vs. State of Maharashtra, AIR 1994 Bom. 271***

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Internet

UNIT - 3

SYNOPSIS OF UNIT

- Constitution of Revenue Officers
- Powers and Procedure of Revenue Officers
- Karnataka Revenue Appellate Tribunal
- Appeal & Revision
- Land & Land Revenue
- Record of Rights
- Realisation of Land Revenue
- Bibliography

Synopsis of Topic

- **Revenue Officers**
    - *Regional Commissioner (Sec.7)*
    - *Deputy Commissioner (Sec.8)*
    - *Special Deputy Commissioner (Sec.9)*
    - *Assistant Commissioner (Sec.10)*
    - *Tahsildars (Sec.11)*
    - *Special Tahsildars (Sec.12)*
    - *Revenue Inspectors (Sec.15)*
    - *Village Accountant (Sec.16)*
    - *Survey Officers (Sec.18)*
    - *Other officers*
- **Powers and Procedure of Revenue Officers**
    - *Power to transfer cases*

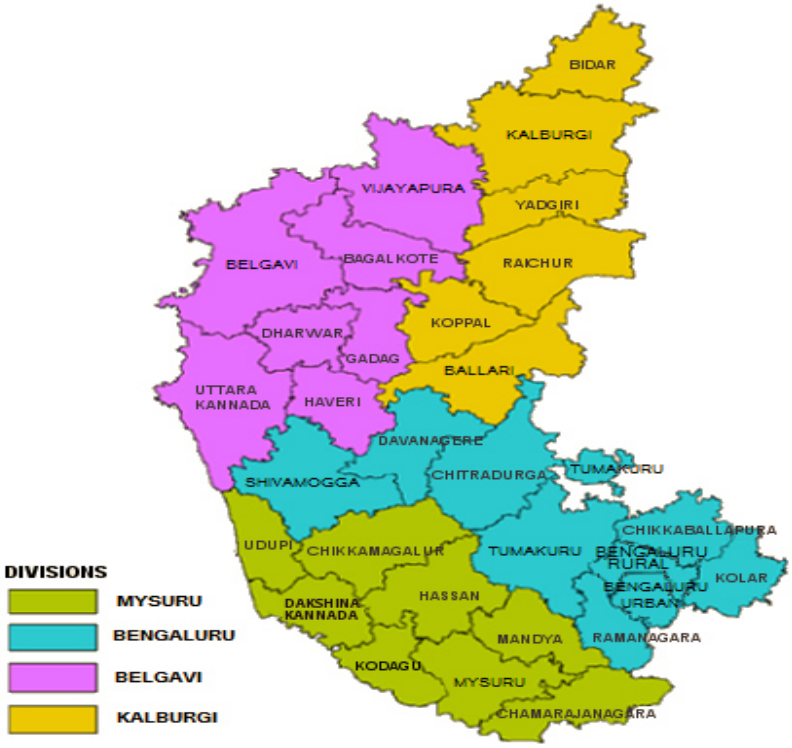
- *Power to give summons*
- *Power to enter upon land*
- *Power of eviction*
- *Summons & Notices*
- *Modes of Inquiry*
- *Formal inquiry:*
- *Hearings*

Constitution of Revenue Officers

1. Regional Commissioner(Sec.7)

The State is divided into several regions. Such regions are headed by a Regional Commissioner. The State Govt. is empowered to appoint the Regional Commissioner for each region who is the Chief Revenue Officer in the region and exercises powers of superintendence and control within the region over all officers subordinate to him.

The Regional Commissioner exercises the powers and discharge duties conferred and imposed on him or under the Act and also by the State Govt.



2. Deputy Commissioner(Sec.8)

The Deputy Commissioner is appointed by the St. Govt. to administer the district. The Deputy Commissioner is subordinate to the Regional Commissioner. The Deputy Commissioner acts according to the instructions of the State Govt. in those matters which are not specially provided for by law and he has to exercise all the powers and discharge duties conferred and imposed on him under the Act or any other law. In addition to this the Deputy Commissioner is also empowered to exercise the powers and duties of the Assistant Commissioner.

3. Special Deputy Commissioner(Sec.9)

The State Govt. is empowered to appoint Special Deputy Commissioner if it feels expedient to do so for the required period of time in addition to the Deputy Commissioner. The Special Deputy Commissioner is subordinate to the Regional Commissioner or Deputy Commissioner depending upon the matters as specified by the State Govt. With the directions of the State Govt. the Special Deputy Commissioner exercises those powers and duties which are exercised and performed by the Deputy Commissioner either in a part or whole of District.

4. Assistant Commissioner(Sec.10)

The State Govt. appoints an Assistant Commissioner to be in-charge of one or more taluks called a Revenue Sub-division and he will be exercising and performing duties conferred on him under the Act or any other Law and also the powers and duties of the Deputy Commissioner under the Act.

5. Tahsildars(Sec.11)

The Tahsildar is the chief officer entrusted with the land revenue administration of the Taluk. The Tahsildar is subordinate to the Assistant Commissioner in-charge of the Taluk and where there is not such Assistant Commissioner to the Deputy Commissioner of the District. The Tahsildar exercises and performs all the powers and duties conferred under the Act or any other law or as instructed by the Deputy Commissioner. The Tahsildar also has the power to depute any of his subordinates to perform any portion of his ministerial duties.

6. Special Tahsildars(Sec.12)

The Special Tahsildar is appointed for the Taluk in addition to the Tahsildar and exercises

and performs those of the Tahsildar in the Taluk under the Act and any other law as the State Govt. directs. The Special Tahsildar also has the power to depute any of his subordinates to perform any portion of his ministerial duties. The Special Tahsildar is subordinate to the Tahsildar (in certain matters as specified by the State Govt.) and also to the Assistant Commissioner and where there is no such Assistant Commissioner to the Deputy Commissioner of the District. The Special Tahsildar also has the power to depute any of his subordinates to perform any portion of his ministerial duties.

7. Revenue Inspectors(Sec.15)

The Deputy Commissioner appoints the Revenue Inspector for a Circle of a Taluk subject to the general orders of the Regional Commissioner and State Govt. The Revenue Inspector performs all the duties prescribed under the Act or any other law.

8. Village Accountant(Sec.16)

The Deputy Commissioner appoints the Village Accountant for a village or group of villages subject to the general orders of the Regional Commissioner and the State Govt. The Village Accountant performs all the duties as prescribed under the Act or any other law.

The Village Accountant has the responsibility of keeping the registers, accounts and other records and also to prepare all records connected with the affairs of the village, which are required either for the use of the Central or the State Government or the public such as public notices, reports, mahazars and depositions.

9. Survey Officers(Sec.18)

For the purposes of survey, assessments and settlements of land of land revenue and settlements of boundaries and connected matters provided for in the Act the Govt. is empowered to appoint survey officers like Director of Survey Settlement and Land Records, Joint Director of Land Records, Joint Director of Settlement, Assistant Director for Settlement, Assistant Director of Land Records Settlement Officers, and Assistant Settlement Officers.

The said officers have the powers to take cognizance of all matters connected with survey and settlement and they also have such powers and perform such duties as may be prescribed by or under the Act or any other law.

10. Other officers

The State Govt. is empowered to appoint such other officers and invest with such powers as may be necessary to give effect to the provisions of the Act.

Powers and Procedure of Revenue Officers

1. Power to transfer cases

The Regional Commissioner has the power to transfer any case of class of cases arising under the Act from any revenue officer to any other revenue officer competent to deal with it in the same District or any other District in the same region if an application is made to him and also if he opines that it is expedient to do so for the purposes of the ends of justice.

Similarly the Deputy Commissioner has the power to transfer any case or class of cases arising under the Act for the sake of inquiry or decision from his own file or from the file of any other Revenue Officer subordinate to him to any other Revenue Officer subordinate to him and who is competent to deal with it.

2. Power to give summons

Every Revenue Officer not below the rank of the Tahsildar has the power to take evidence on oath and to summon any person whose attendance he considers necessary either to be examined as a party or to give evidence as a witness or to produce documents for the purpose of any inquiry such officer is empowered to conduct and the summoned person is bound to attend either in person or by an authorised agent.

If any person fails to comply with the summons to attend as witness or to produce any document, the officer is empowered to issue a bailable warrant of arrest; order him to furnish security for appearance or impose fine upon him a fine not exceeding twenty rupees.

In case if the person whose evidence is required is unable to personally appear due to sickness or infirmity the officer either of his own motion or on the application of such party can exempt him from personal appearance.

3. Power to enter upon land

Any Revenue Officer and his servants and workmen while under his observation and control have the power to enter any land or premises belonging to the State Govt. or to any other person for the purposes of measurement, fixing or inspecting boundaries, classification of soil or assessment or for any other purpose connected with the lawful exercise of his office under the Act or any other law relating to land revenue

But to enter any building used as a dwelling house or upon any enclosed Court or garden attached to a dwelling house, the consent of the occupier must be obtained by giving 7 days prior notice.

4. Power of eviction

The Deputy Commissioner has the power to evict any person who is wrongfully in possession of land or where any order to deliver possession of land has been passed against any person under the Act by serving notice on the person.

Summons & Notices

Every notice under the Act is to be served by tendering or delivering a copy thereof to the person on whom it has to be served or his agent or by affixing a copy to some conspicuous place on the land if any to which such notice refers.

If the person on whom the notice is to be served resides in any other District the notice may be sent by post to the Deputy Commissioner of that District and he shall be responsible to cause it to be served.

Modes of Inquiry

Formal inquiry:

In this type of inquiry to determine any question under KLR Act, 1964 or any other law the officer himself or somebody in his presence and hearing and under his personal superintendence and direction (in case if such officer is under any disability) should take down evidence either in Kannada or English or any other language as may be prescribed by the State Govt. for use in the District. Such evidence must be signed by the officer conducting the inquiry.

Every decision or order after formal inquiry shall contain full statement of grounds and a certificate has to be attached in this regard

Summary inquiry

In summary inquiry the officer conducting such inquiry shall record in his own hand either in Kannada or English or in any other language of the Taluk or village the summary of the evidence and a minute of the proceedings containing material averment made by the parties interested and also the decision and the reasons for the same.

Hearings:

Every hearing whether in a formal or summary enquiry shall be in public and the parties or their recognised agents should be given due notice to attend. The order passed after hearing should be signed and pronounced in open Court on the day which has been notified to the parties or their recognised agents.

In case where neither the parties nor their recognized agents are present in the Court when the order is pronounced the substance of the order containing the decision should be sent to such party or recognized agent

Where the party fails to appear in the proceedings despite due notice of the same the proceedings should be held in his absence or dismissed for default and when once such an order has been made the party can apply for getting that order set aside by furnishing any sufficient cause.

Synopsis of Topic

- *Constitution*
- *Powers of the Tribunal*
    - *Powers of review(Sec.44)*
    - *Powers to call for returns(Sec.46)*
    - *Power to make regulations (Sec.48)*
    - *Power of revision (Sec.56)*

Karnataka Revenue Appellate Tribunal

Sec. 40(1) of the KLR Act, 1964 says that the State Govt. has the power to constitute an appellate tribunal called Karnataka Revenue Appellate Tribunal for the State of Karnataka.

Constitution

The Tribunal shall consist of the following six members appointed by the State Govt. viz.,

1. A Chairman who shall be an officer of the rank of Regional Commissioner
2. Five members, three of whom shall be persons who are District Judges and the others shall be officers having experience in administration of revenue matters not below the rank of a Deputy Commissioner

The strength of the Tribunal can be increased by the Govt. by way of notification if there is an increase in the business of the Tribunal

The powers of the Tribunal shall be exercised by a bench of two members of which one shall be a District Judge and another shall be an officer having experience in administration of revenue matters.

The Chairman may constitute a Full bench of 3 members if he so thinks fit

Notwithstanding these rules of bench constitution a single member of the Tribunal

Powers of the Tribunal

The Tribunal shall exercise such powers of appeal, reference or revision as vested by or under the Act or any other law

The State Govt. may confer on the Tribunal any appellate or revisional power or function and the Tribunal shall discharge such functions so conferred

1. Powers of review(Sec.44)

The Tribunal has the power to review any order passed by itself either on its own motion(suo moto) or on the application of any affected party and pass suitable orders

But such power can be exercised only when the Tribunal is satisfied that there has been:

- discovery of new and important matter or evidence was not in the knowledge of the party or could not have been produced by him at the time of passing the order or
- there has been some mistake or error apparent on the face of the record or
- there has been any other sufficient reason

2. Powers to call for returns(Sec.46)

'returns' means an official report or statement submitted in response to a formal demand

This power implies the power of superintendence of the Tribunal over the authorities which are subordinate to it.

In regards to its appellate and revisional jurisdiction the Tribunal may call for returns from and also issue general directions to the authorities subordinated to it and prescribe forms for regulating the practice and proceedings of such authorities.

But such directions and forms should not be inconsistent with the provisions of any law

presently in force.

3. Power to make regulations (Sec.48)

Sec.48 confers on the Tribunal the power to make regulations and rules thereunder regarding:

i. Its own practice and procedure and

ii. The disposal of its business

iii. Costs incidental to any of its proceedings

But such regulations must be:

i. Consistent with the Act and rules

ii. Made after obtaining previous sanction from the Govt. &

iii. Published in the official gazette

4. Power of revision (Sec.56)

Sec.56 confers on the Tribunal (and also on other Revenue Officers) the power to call for and examine a record of any inquiry or the proceedings of any subordinate officer for the purpose of satisfying itself as to the legality or propriety of the proceedings of such officer.

Hence if it appears to the Tribunal that any decision or order or proceedings of any subordinate officer should be modified, annulled or reversed it can do so by giving notice on the interested parties and after giving an opportunity of being heard.

Synopsis of Topic

- *Appeal & Revision*
- *Procedure of appeal*
    - *Appeals from original orders (First Appeal)*
    - *Second appeal*
    - *Limitation period for appeals*
- *Powers of appellate authority*
    - *Appellate powers*
    - *Power to stay of execution of orders*
    - *Power of revision*
    - *Power to make amendments*

Appeal & Revision

Procedure of appeal

Appeals from original orders (First Appeal)

An appeal lies from every original order passed under this Act or the rules made thereunder –

(a) if such an order is passed by a Revenue Officer subordinate to the Assistant Commissioner, whether or not invested or delegated with the powers of the Assistant Commissioner or the Deputy Commissioner to the Assistant Commissioner

(b) if such an order is passed by the Assistant Commissioner whether or not invested with the powers of the Deputy Commissioner, to the Deputy Commissioner;

(c) if such an order is passed by the Deputy Commissioner, to the Tribunal;

(d) if such an order is passed by the Regional Commissioner, to the Tribunal.

(e) if such an order is passed by a Survey Officer below the rank of an Assistant Director of Land Records or Assistant Director for Settlement, to the Assistant Director of Land Records or Assistant Director for Settlement, as the case may be;

(f) if such an order is passed by a Survey Officer of the rank of an 1 Assistant Director of Land Records or Assistant Director for Settlement, to the Joint Director of Land Records or Joint Director for Settlement, as the case may be;

(g) if such an order is passed by the Joint Director of Land Records or Joint Director for Settlement, to the Director of Survey, Settlement and Land Records;

(h) if such an order is passed by the Director of Survey, Settlement and Land Records, to the Tribunal.

Case law

1. In ***Hole Honnur Mandal Panchayat Vs. KAT, 1989 (1) Karnataka LJ 132,*** instead of approaching the Assistant Commissioner in appeal, the 5th Respondent preferred an appeal directly to the Deputy Commissioner against the order of the Tahsildar and the Deputy Commissioner held that the appeal lies only to the Assistant Commissioner and not to the Deputy Commissioner and further directed the Appellant(5th Respondent) to approach the appropriate forum. Against this order the 5th Respondent appealed to the Tribunal. The Tribunal while conceding that the appeal lies only to the Assistant Commissioner observed that its only a technical defect and proceeded to dispose of the appeal on merits. It was this order which came up for consideration before the High Court. Allowing the Writ Petition, H.G. Balakrishna, J, held as follows:

"Patently there is a serious error of law apparent on the fact of the record and the Tribunal was wrong in disposing of the appeal on merits. On the other hand it ought to have rejected the appeal confirming the order of the Deputy Commissioner passed in Case No. RA 35/85-86, dated 13.12.1985. When the necessary forum provided under the statute is not approached and the remedy is not exhausted, the Tribunal has no competence to entertain an appeal by overriding the provisions in the statute. It is a clear case of jurisdictional excess and therefore this Writ Petition deserves to be allowed."

2. In ***Siddappa Hanumanthappa Kori Vs. The Assistant Director of Land Records, ILR 1998 Kar 1834*** a contention was raised that in view of the Govt. Order dated 24.10.1973 captioned 'Karnataka Adaptations of Laws Order, 1973' there has been a substitution of the expression 'Deputy Commissioner of Land Records' by the expression Joint Director of Land Records and so the appeal to the Joint Director of Land Records against the order of the Assistant Director of Land Records was competent. The Court negativing the said contention

held as under:

“Sec.49 of the Act specifies the hierarchy of offices to whom first appeals are to be filed against the original orders. Any change of forum of appeal in Sec.49 of the Act of 1964, could be made only by resorting to the amending power vested in the State and the same cannot be exercised by any indirect means such as resorting to a limited enabling power of under Sec.6 of the Mysore State (Alteration of Name) Act, 1973. The Revenue Appellate Tribunal found that against the order of the Assistant Deputy Director of Land Records, a first appeal could be filed only to the Deputy Director of Land Records being the immediate appellate authority specified in Sec.49 of the Act of 1964. The substitution in the notification dated 24.10.1973 cannot vest jurisdiction in the Joint Director of Land Records to entertain and dispose of the appeal against the order of the Assistant Superintendent of Land Records contrary to the specific provision under Sec.49 of the Act of 1964. A first appeal against the order of the Assistant Director of Land Records lies to the Deputy Director of Land Records under Sec.49(f) of the Act of 1964. The appeal to the Joint Director of Land Records consequently was incompetent and without jurisdiction.

3. In ***Radha Bai Vs. Shashikala ILR 1998 302*** an objection was raised by the contesting respondent that the petitioner was disentitled to maintain the petition under article 226 of the Constitution of India as the statutory remedy of appeal available under section 49(c) of the Act to challenge the order impugned therein was not exhausted by the petitioner placing reliance on the decision of the Hon'ble Supreme Court in ***State of UP Vs. Mohamed Noor, AIR 1958 SC 86*** which was reaffirmed in ***A.V. Venkateswaran vs. R.S.Wadhwani, AIR 1961 SC 1506*** which was rendered by a bench of five judges:

“If an inferior Court or Tribunal of first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior Court’s sense of fair play the superior Court may, we think, quite properly exercise its power to issue or Tribunal of first instance, even if an appeal to another inferior Court or Tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what ex facie was a nullity for reasons aforementioned.”

Second appeal

Sec.50 provides for a second appeal shall against any order passed in a first appeal under section 49 in the following manner:

(a) if such an order is passed by the Assistant Commissioner, to the Deputy Commissioner;

(b) (b) if such an order is passed by the Deputy Commissioner, to the Tribunal;

(b1) if such an order is passed by the Assistant Director for Settlement or the Assistant Director of Land Records, to the Director of Survey, Settlement and Land Records;

(c) if such an order is passed by the [Joint Director of Land Records or Joint Director for Settlement] or by the [Director of Survey] , Settlement and Land Records to the Tribunal.

An order passed on second appeal will be final and no further appeal lies.

Limitation period for appeals

No appeal can be made in the following instances:

(a) in the case of a first appeal, after the expiry of sixty days from the date of the order appealed against; and

(b) in the case of a second appeal, after the expiry of ninety days from the date of the order appealed against.

A certified copy of the order appealed from should accompany every Petition or appeal unless the production of such copy is dispensed with by the appellate authority.

Powers of appellate authority

1. Appellate powers

The appellate authority has the power to annul, reverse, modify or confirm the order appealed from but it should also record the reasons for doing the same. The appellate authority can also direct the officer making the order to make further inquiry or take additional evidence on such points as it specifies or the appellate authority may itself make such inquiry take such additional evidence.

However the taking of such additional evidence shall be subject to following conditions:

(a) the Revenue Officer from whose order the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(b) the appellate authority requires any document to be produced or any witness to be examined to enable it to pronounce orders, or

(c) for any substantial cause the appellate authority allows such evidence or document to be produced or witness to be examined:

The appellate authority which allows taking of additional evidence should record the reason for its admission.

However any order passed by a Revenue Officer shall not be reversed or altered in appeal on account of an error, omission or irregularity in the summons, notice, proclamation, warrant or order or any other proceedings under KLR Act, 1964 unless the same has occasioned a failure of justice.

Case law

If an appeal is preferred by a party before a wrong forum, the proper course is to return the memorandum of appeal to the appellant permitting him to present the same before appropriate appellate authority. Where the appellate authority proceeded to dismiss an appeal so preferred as not maintainable the order of dismissal was held to be bad in the eye of law – ***Anandappa Vs. State of Karnataka, ILR 1989 (1) Kar 983.***

2. Power to stay of execution of orders

The Revenue Officer who has passed an order or his successor in office has the power to order for stay of execution of orders for such time as is required for filing an appeal and obtaining a stay order from the appellate authority

The appellate authority also has the power to stay the execution of order appealed from for such time as it thinks fit or till the decision of the appeal whichever is appeal and where sufficient cause has been shown the appellate authority can cancel or vary such stay order.

3. Power of revision

The power of revision can be exercised by the Tribunal, any Revenue Officer not below the rank of Assistant Commissioner and any Survey Officer not below the rank of Deputy Director of Land Records or an Assistant Settlement Officer

In exercising the power of revision the said authorities for the purpose of satisfying themselves as to the legality or propriety of the proceedings have the power to call for and examine the record of any inquiry or the proceedings of any subordinate officer under KLR Act, 1964 or under Sec.54 of Code of Civil Procedure, 1908.

For the aforesaid purposes Special Deputy Commissioner will be deemed to be subordinate to

the Deputy Commissioner and all revenue officers deemed to be subordinate to the Tribunal.

However any order passed by a Revenue Officer shall not be reversed or altered in revision on account of an error, omission or irregularity in the summons, notice, proclamation, warrant or order or any other proceedings under KLR Act, 1964 unless the same has occasioned a failure of justice.

4. Power to make amendments

The Revenue Officer passing an order has the power to correct clerical or arithmetical mistakes in such orders arising therein from any accidental slip or omission. This power can be exercised by the Revenue Officer either on his own motion or if an application is made by the parties for the said correction. However before making such correction parties must be given an opportunity of being heard.

Synopsis of Topic

- *Scope of Govt.'s authority over lands*
- *Powers & Rights of Govt. w.r.t Land*
    - *Rights as to mines and mineral products*
    - *Power as to assignment of lands*
    - *Power of disposal of lands*
    - *Power as to recovery*
    - *Right as to trees & forests*
    - *Power as to firewood and timber*
- *Manner of assessment, commutation of non-agricultural assessment and prohibition of use of land for certain purposes*
- *Method of Revenue Assessment*
- *Assessment by whom to be fixed*
- *Register of alienated lands*
- *Settlement of assessment with whom to be made*
- *Land Revenue to be a paramount charge on the land*
- *Forfeited holdings may be taken possession of and otherwise disposed*
- *Receipts*
- *Penalty for failure to grant receipts*

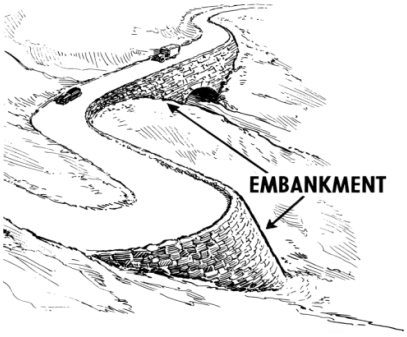
Land & Land Revenue

Scope of Govt.'s authority over lands

Sec. 67 defines the extent of Govt.'s authority over land

All public roads, streets, lanes and paths, bridges, ditches, dikes and fences, on or beside the same, the bed of the sea and of harbours and creeks below high water mark and of rivers, streams, nallas, lakes and tanks and all canals and water-courses and all standing and flowing

waters, and all lands wherever situated which are not the property of individuals belong to the State Govt.



Dike Creek (small version of river)

If there are claims over any such property by any person against the State Govt. the Deputy Commissioner or Survey Officer (not below the rank of DC) should conduct a formal inquiry and decide such claims over the Govt. property.

If any person is aggrieved by an order made as above or in appeal or revision therefrom is at liberty to file a civil suit contesting such an order within a period of one year from the date of such order.

Powers & Rights of Govt. w.r.t Land

1. Rights as to mines and mineral products

The State Govt. has absolute right over mines, minerals and mineral products and shall have all the powers necessary for the proper enjoyment or disposal of such rights and this right prevails over any law in force before the commencement of KLR Act, 1964 or the terms of any grant or of any instrument of transfer executed by or on behalf of the Govt.

2. Power as to assignment of lands

The St. Govt. has the power to assign its lands not in lawful occupation of any person in any village for the purpose of free pasturage for the village cattle or for forest reserves or for any other public purpose and such assigned lands are not to be used without the sanction of the Deputy Commissioner.

3. Power of disposal of lands

Under Sec.69 State Govt., Regional Commissioner, Deputy Commissioner Assistant Commissioner or Tahsildar has the power to dispose of land or other property belonging to

State Govt. under Sec.67 for the purposes of agriculture, industry or any public utility or for construction of buildings.

4. Power as to recovery

Under sec.73 the St. Govt. has the power to recover the value of any natural product as an arrear of land revenue from any person who has unauthorisedly removed such natural thing from any land which is set apart for special purpose or from any land which is the property of the Govt. besides this the St. Govt. also has the power to impose penalty on such person and initiate criminal proceedings against such person for such unauthorised removal.

Under Sec.78 the State Government has the power to recover the value of trees from the person who has unauthorisedly fell and appropriated any tree or any portion of that which is the property of Government as an arrear of land revenue. Besides this penalty can also be imposed on such person and criminal proceedings initiated against such person. The decision of the Tahsildar as to the value of any such tree or its portion or other natural product shall be final.

Case law

The Tahsildar had ordered that certain amount should be recovered from the Petitioner for felling the timber from the government land. The Assistant Commissioner had remanded the matter to the Tahsildar to hold an enquiry after giving an opportunity to the Petitioner which the Tahsildar did not do. It was held that it was obligatory on the part of the Tahsildar to make an enquiry and hold whether the Petitioner had unauthorisedly felled or appropriated a tree or removed any other natural product and whether the property is the property of the government. As the Tahsildar had not given any specific finding on this aspect the order was quashed and the matter was remitted back to the authority to take proceeding in accordance with law – ***Putherira Ponnappa Vs. Tahsildar, ILR, 1973 Mys. 413***

5. Right as to trees & forests

The State Government has the right to all trees, brush-wood, jungle or other natural product and these are to be preserved or disposed of in the manner the State Government direct.

All road side trees on lands which are held by any person which have been planted and reared by or under the orders of the State Government or any local authority vest with the State Government but in case if such trees dying or being blown down or being cut down by order of Tahsildar the timber will become the property of the holder of the land in which they were

growing.

6. Power as to firewood and timber

The State Government through the Deputy Commissioner or by any such officer is empowered to regulate the use of firewood or timber for domestic or other purposes

Land Revenue

Scope of land revenue

Sec.80 clarifies that all land whether agricultural or non-agricultural is liable to pay land revenue to the State Govt. unless specially exempted under the provisions of any special contract with the Govt. or any provision of the Act. However by way of notification or order the Govt. may exempt either prospectively or retrospectively any class of lands or any part thereof from payment of land revenue. But the reasons for such exemption should be recorded.

Sec. 81 contemplates three types of land viz., alluvial lands, newly formed islands, abandoned river-beds and states that these land types are subject to pay land revenue as far as the holding of such lands by any person is upto one acres. Where such type of land is beyond one acre then it shall be at the disposal of the Deputy Commissioner.

Manner of assessment, commutation of non-agricultural assessment and prohibition of use of land for certain purposes

Land revenue leviable on any land, should be assessed with reference to the use of the land for the purpose of agriculture.

Sec. 83(2) states that land used for non-agri purposes if used for agriculture is liable to land revenue. That is to say land used for any other purpose other than agriculture if used for agricultural purpose will be treated on par with agricultural lands and hence subject to payment of land revenue.

Land revenue leviable on any land and assessed with reference to the use of that land

(a) for purpose of dwelling houses;

(b) for industrial or commercial purposes; or

(c) for any other non-agricultural purpose,

should continue to be levied at such rate at which it was levied unless such assessment is

commuted.

In respect of any land used for any purpose other than agriculture, assessment payable annually was leviable or has been levied such assessment may be commuted by payment to the State Government of an amount equal to five times the amount of such annual assessment, and on such commutation such land shall be exempt from such annual assessment.

The Tahsildar or a Survey Officer have the power to prohibit the use for certain purposes of any land liable to the payment of land revenue and may summarily evict any holder or other person who uses or attempts to use the same for any such prohibited purpose.

Case Law: ***State of Karnataka Vs. Shankara Textiles Mills Ltd. 1995 AIR 234***

The Supreme Court held that to become a non-agricultural land permission u/Sec.95 of the KLR Act, 1964 is mandatory.

The rights over these type of land vests with the St. Govt.

But the holder or such alluvial land is entitled to the temporary use of such land if its upto one acre in size

Beyond the one acre of land such land will be at the disposal of the Deputy Commissioner

Method of Revenue Assessment

1. Land used for non-agri purposes if used for agriculture is liable to land revenue

i.e., non agri land used for agriculture will be treated on par with agri lands

Case Law

In ***State of Karnataka Vs. Shankara Textiles Mills Ltd. 1995 AIR 234 -*** the Supreme Court held that to become a non-agricultural land permission u/Sec.95 of the KLR Act, 1964 is mandatory.

In ***M/s. Mysore Feeds Ltd. Vs. State of Karnataka, ILR 1988 KAR 889*** it was held as follows:

“A reading of Sections 83 and 95(2) of the Revenue Act indicates that levy of land revenue on a land does not necessarily lead to the inference that it is agricultural land. A land not used for any purpose, may still be levied with land revenue and in case such a land is sought to be used for non-agricultural purposes, Section 95(2)operates, requiring permission.

A land which is agricultural may cease to be used for agriculture for various reasons. Theoretically, such a land may be capable of being used for agriculture and may fall within the definition of 'land' defined in Section 2A(18) of the Karnataka Land Reforms Act. But, the definitions are always subject to context and should be read in a practical mariner.

In the absence of any specific finding that these lands were being used as agricultural lands, the Special Deputy Commissioner erred in assuming them to be agricultural lands by the sole fact that the petitioner sought permission for using the lands for non-agricultural purposes under Section 95(2) of the Land Revenue Act."

Assessment by whom to be fixed

The assessment of the amount to be paid as land revenue on all lands which are not wholly exempt from the payment of land revenue, and on which assessment has not been fixed, should be fixed by the Deputy Commissioner, for a prescribed period and the amounts due according to such assessment should be levied on all such lands.

In the case of lands partially exempt from land revenue, or the liability of which to the payment of land revenue is subject to special conditions or restrictions, regard should be had in the fixing of the assessment and the levy of the revenue to all rights legally subsisting according to the nature of the said rights.

Further where any land which was wholly or partially exempt from payment of land revenue has ceased to be so exempt, it will be lawful for the Deputy Commissioner to fix the assessment of the amount to be paid as land revenue for such land, with effect from the date on which such land ceased to be so exempt or any subsequent date.

After the expiry of the period for which the assessment of any land is fixed the Deputy Commissioner has the power to revise it from time to time. The assessment so revised should be fixed each time for such period not exceeding the maximum prescribed.

Register of alienated lands

The Deputy Commissioner should keep a register of all lands the alienation of which has been established or recognised and when it shall be shown to the satisfaction of the Deputy Commissioner that a sannad granted in relation to any such alienated lands has been permanently lost or destroyed, he may, grant to any person whom he may deem entitled to the same, a certified extract from the said register for a certain fees This certified extract should be endorsed by the Deputy Commissioner to the effect that it has been issued in lieu of the

sannad which has been lost or destroyed, and should be deemed to be as valid a proof of title like the said sannad.

Settlement of assessment with whom to be made

The settlement of the assessment of each portion of land or survey number to the land revenue should be made with the person who is primarily responsible to the State Government for the same.

Land Revenue to be a paramount charge on the land

Arrears of land revenue due on account of the land by any land holder will be a **paramount charge on the holding**, failure to pay this will make the occupancy or the holding liable to forfeiture along with all rights of the occupant or holder over all trees, crops, buildings and things attached to the land or permanently fastened to anything attached to the land, and the Tahsildar is empowered to make an order in this behalf.

On the making of an order of forfeiture as above, the Tahsildar may, levy all sums in arrears, by sale of the occupancy or the holding or otherwise dispose of such occupancy or holding.

Unless the Tahsildar otherwise directs such occupancy or holding, when disposed of, whether by sale or otherwise will be deemed to be freed from all tenures, rights, encumbrances and equities created by the occupant or holder or any of his predecessors in title in favour of any person other than the Government or in any way subsisting against such occupant or holder. But such an action will not affect the rights of kadim tenants or permanent tenants in alienated holdings in respect of such occupancy or holding.

Case law

The land owner did not pay non-agricultural assessment in respect of certain lands and they were forfeited to the Govt. the owner entered into an agreement of sale with the Plaintiff in which it was stated that the vendee should pay certain amount to the Govt. and the balance to the owner at the time of registration. The Plaintiff (Vendee) had paid only an advance amount but did not make any payment to the Govt. the owner of the land expired and left a Will in favour of the Defendant and subsequently on deposit of the arrears the lands were restored to the successor of the owner. The Plaintiff sought for specific release of Agreement of Sale. It was contended that the lands were restored and it was free from encumbrances and therefore the obligation of the original owner under the agreement of sale was extinguished. It was held that subsection 3 providing for restoration of lands forfeited makes it clear that vesting free

from encumbrances will not be there when the land is restored to the defaulter as in the case of the disposal of the land by sale or otherwise to others by the Govt.. – ***Ganapatsa Govindsa Vs. Ningappa Ramappa, 1980(1) Kar.L.J 89 (DB)***

Forfeited holdings may be taken possession of and otherwise disposed

In the event of the forfeiture of the holding through any default in payment the Tahsildar is empowered to take immediate possession of such holding and it dispose of handing it over to purchaser or any other person.

Receipts

Every Revenue Officer receiving payment of land revenue should give a written receipt for the same at the time when such payment is received by him.

Every superior holder who is entitled to receive any sum due on account of the rent or land revenue from an inferior holder should give him a written receipt for the same at the time when such sum is received by him.

Penalty for failure to grant receipts

If any person is found contravening the previous provision will be liable to pay a fine specified by the Deputy Commissioner which should not be exceeding three times the amount received for which a receipt was not duly granted. However before imposing such penalty a summary enquiry should be conducted by the Deputy Commissioner.

Synopsis of Topic

- *Overview*
- *What the Law says about Record of Rights*
- *Stages of Record of Rights*
- *Stages of Record of Rights*

Record of Rights

Overview

Record of rights is a record containing various revenue documents and registers in which details of land holdings, particulars of the holder, the land revenue payable, survey number concerned and type of soil, trees that are existing on the land etc.

This record is popularly known as RTC (Record of Rights & Tenancy Certificate) or 'pahani' which terms have become part of the legal jargon.

What a record of rights contains? Normally, a record of rights contains the following:

1. The names of persons who are holders, occupants, owners, mortgagees, landlords or tenants of the land or assignees of the rent or revenue thereof
2. The nature and extent of the respective interest of such persons and the conditions or liabilities (if any) attaching thereto.
3. The Rent or revenue (if any) payable by or to any of such persons.
4. Such other particulars as maybe prescribed.

What the Law says about Record of Rights

The entries in Record of rights have a presumptive value unless they are rebutted by the other side.

Entries in record of rights usually reflect possession and not ownership of land. But unless the possession is legal a person is not entitled to have his name entered in the record of rights ***(Baburao Adrashappa Birade Vs. Mallappa Chennappa Birade & Anr. 1967(1) Mys. LJ 261 (DB)).*** The apex Court however has ruled that the entries made in the register of mutations are not admissible in evidence ***(Major Pakhar Singh Atwad & Ors. Vs. State of***

Punjab & Ors. AIR 1995 SC 2125 LACC 244 SC).

On the same lines the Punjab & Haryana High Court has held that the entries can neither be treated as primary nor secondary evidence in a transaction of sale ***(State of Haryana Vs. Visakhi Ram & Ors. 1987, LACC 510(P&H); Mani Ram & Ors. Vs. State of Haryana & Ors. 1990 LACC 481 (P&H).***

However, the record of rights maintained in official course of business is a reliable piece of Evidence in a suit for partition between brothers ***(Digambar Adharpatil Vs. Devram Girdhar Patil (Died) & Anr. AIR 1995 Supreme Court 1728)***

Stages of Record of Rights

Rule 38 of the Karnataka Land Revenue Rules, 1966 envisages the various stages of record of rights

Stages of Record of Rights

The record of rights work in any area should ordinarily be divided into the following four stages namely:

a) First Stage – the preparation of the Preliminary Records including:
    i) Check and verification;
    ii) Decision of disputes; and
    iii) Enquiry into and disposal of appeals
b) Second Stage – the measurement, mapping and apportionment of assessment of sub-divisions;
c) Third Stage – the preparation of the final Record of Rights; and
d) Fourth Stage – the subsequent maintenance of the Record of Rights including:
    i) Recording of mutations;
    ii) Check and certification of entries in the Mutation Register;
    iii) Decision of disputes;
    iv) Enquiry into and disposal of appeals;
    v) Measurement of new hissas and incorporation of the results of survey in the Record of Rights

The First and the Fourth stages of Record of Rights work should be attended to by the Revenue Department and the Second and the Third Stages of the said work should be attended to by the Department of Land Records.

Synopsis of Topic

- *Liability of paying land revenue*
- *Precedence of State's claim of land revenue over other claims*
- *Time of payment of land revenue*
- *Arrear of land revenue*
- *Process for recovery of arrears*
- *Notice of demand*
- *Forfeiture of occupancy or alienated holding*
- *Distraint & sale of immovable property*
- *Attachment and sale of immovable property*
- *How to make the attachment*
- *Claims to attached immoveable property*
- *Procedure for effecting sale of immovable property*
- *Sale to be by auction*
- *Prohibition to bid at auction*
- *Purchase of property by government*
- *Sale of perishables (Sec.172)*
- *Sale not to be excessive*
- *Deposit by purchaser of immoveable property*
- *Failure to make deposit*
- *Setting aside sale*
- *Confirmation of sale*
- *Refunds*
- *Certificate of purchase*
- *Removal of obstruction*

- *Application of proceeds of sale*
- *Liability of certified Purchaser*
- *Recovery by attachment of the defaulter's village and taking it under management*
- *Lands of such village to revert to Government free of encumbrances*
- *Application of surplus profits*
- *Restoration of village so attached*
- *Village, etc., to vest permanently in the State Government if not redeemed within twelve years*
- *Recovery of other public demands*
- *Recovery of moneys from surety*
- *Recovery of arrears due in any one district by Deputy Commissioner of another district*

Realisation of Land Revenue

Liability of paying land revenue

Sec.157 places the responsibility of payment of land revenue on individuals who are connected to the land. It says that in case of unalienated land the occupant and in case of alienated land the superior holder is primarily liable to pay the land revenue which is inclusive of all arrears.

Case law

In case if the persons who are primarily liable to pay the land revenue then the person who is in possession of the land is liable to pay the land revenue. The employment of the verb 'shall' is inconclusive and similarly mere absence of the imperative is not conclusive either. The question whether it is mandatory or directory has to be decided, particularly in the context of the other provisions of the Act and the general scheme thereof. Considered from these principles, the word 'shall' occurring in sub-sec(2) is not a command to the revenue authorities to recover the arrears only from the tenant or from a person in possession of the land – ***M.K. Devaraj Vs. State of Mysore & Ors., 1974 (2) Kar LJ 382***

Precedence of State's claim of land revenue over other claims

Sec.158 states that the claim of the St. Govt. will have precedence over any other debt, demand or claim whatsoever whether in respect of mortgage judgment-decree, execution or attachments or otherwise against any land or holder.

Case law

In ***Dena Bank Vs. M/s. B.P.P & Co. ILR 1992 Kar 2659*** – where the arrears of sales tax sought to be recovered by the authorities under the Karnataka Sales Tax Act has been held to have precedence on the suit claim of the Plaintiff Bank even though it is a secured debt based on the equitable mortgage. The High Court therein negating the contention that as the Sales Tax Act itself does not provide for recovery of sales tax arrears as arrears of land revenue, the mere fact that the Land Revenue Act provides for recovering the amount due under any other law as arrears of land revenue will not be of any efficacy because substantive law being the Sales Tax Act does not provide for recovering the arrears as arrears of land revenue, held that it is not permissible to hold that the Sales Tax arrears due to the State will have precedence over the claim of others. The High Court holding that the Karnataka Sales Tax Act itself specifically provides for recovery of the dues under the Sales Tax Act as arrears of land revenue, further held that such contention would have been of considerable significance, had there been no provision as contained in Sec.13(3)(a) of the Karnataka Sales Tax Act. The High Court distinguished the decisions of the Hon'ble Supreme Court in the case of ***M/s. Builders Supply Corporation Vs. Union of India AIR 1965 SC 1061*** and ***Collector of Aurangabad Vs. Central Bank of India in AIR 1967 Supreme Court 1831*** observed that in those cases Secs.14 and 104 of the Hyderabad Land Revenue Act did not provide for recovery of other taxes due as arrears of land revenue and that therefore their Lordships of the Supreme Court held that the other taxes due under any other law other than the Land Revenue Act cannot be recovered in preference to the other claim.

Time of payment of land revenue

The land revenue becomes due on the first day of that year and is to be paid at such times in such instalments to such persons and at such places as prescribed.

Rule 110 of Karnataka Land Revenue Rules provides that the land revenue leviable on account of a revenue year shall be payable in four instalments in the months of January, February, March and April of each year. Each instalment shall be paid by the 20th day of each such month and if any person wished to pay the entire year's revenue in one instalment he may do so by the 20th of January.

Arrear of land revenue

Any installment of land revenue that is not paid on the date prescribed for payment under Sec.159 becomes an arrear of land revenue and the person responsible for such payment will become a defaulter.

The evidence of existence of arrear of land revenue and of its amount and of the person who is the defaulter is to be found in the statement of account certified by the Deputy Commissioner or by Assistant Commissioner.

Case law

1. If Inam lands belonging to a joint Hindu family were forfeited by the Deputy Commissioner under Sec.54 for defaulting to pay arrears of land revenue due thereon, all the members of the family must be deemed to have lost their rights as jodidars and they cannot file a suit for partition and possession of the property as if they are still owners of the property – ***Krishna Murthy Vs. Subba Rao, ILR 1952 Mys 37***

2. The presumption under Sec.54 is that at a sale for arrears of land revenue the entire property is sold. Such a sale implies forfeiture of all prior claims and encumbrances and the purchaser gets a free and absolute title. The sale of joint family property for payment of claims due to the Govt. on account of land revenue and taxes is recognised by the Hindu law as a justifiable necessity binding on the entire family and such sale can be questioned in a civil Court only on the ground of fraud by any party by pleading and proving particulars of the fraud – ***Channabasavegowda & Ors. Vs. Rangegowda & Ors., ILR 1951 Mys 259***

Process for recovery of arrears

After serving of notice of demand in writing on the defaulter the arrears of land revenue may be recovered by any one or more of the following processes namely:

(a) By forfeiture of the occupancy or alienated holding in respect of which the arrear is due under Sec.163

(b) By distraint and sale of the defaulter's moveable property including the produce of the land

(c) By attachment and sale of the defaulter's immoveable property

(d) In case of alienated holdings consisting of entire villages or shares of villages, by attachment of the said villages or shares of villages and taking them under Govt. management

Notice of demand

A notice of demand is issued on or after the day following that on which the arrear became payable.

The form and contents of the notice of demand, the cost recoverable for such notice from the defaulter as an arrear of land revenue and the officers by whom such notices should be issued is to be as prescribed.

Forfeiture of occupancy or alienated holding

The Tahsildar is empowered under Sec.163 to declare the land liable for arrear of land revenue is to be forfeited and sell or otherwise dispose of the same and credit the proceeds to the defaulter's account:

The Tahsildar should not declare the forfeiture of any such land:

Unless he has issued a proclamation and written notices of the intended declaration in the prescribed manner under Sec.168 for effecting sales of immovable property and until after the expiration of at least fifteen days from the latest date on which any of the said notices should have been published.

The Tahsildar should make such a declaration only where the land revenue exceeds rupees ten thousand.

Before the land with arrears of revenue is sold if any person interested in such land pays the entire arrears of land due and expenses incurred so far the Tahsildar may cancel the declaration of forfeiture.

Case law

Forfeiture for non-payment of land revenue operates only as resumption of the holding so far as Govt. is concerned who would generally restore it on payment of arrears but doesn't necessarily extinguish rights and equities that subsist between parties - ***Munibachappa Vs. St. of Mysore, ILR 1954 Mys 222***

Crops raised on the land by the trespasses and casuarinas plantation is not a crop. A crop is some produce either agriculture or horticulture and which could be cut and stored –

Venkatapathi Naidu Vs. State of Mysore 1962 Mys LJ

The word 'forfeiture' in Sec.54 implies loss of a legal right. It is not necessary that the property forfeited should be actually sold by the Deputy Commissioner in order that the rights of the defaulting holders may be affected. The moment there is an order of forfeiture on failure of payment of revenue the defaulting holder loses all rights in the property; if the property is obtained by the defaulter later on from Govt. the equities existing against him may be enforced by others – ***Krishnamurthy Vs. Subba Rao, ILR 1952 Mys 37***

Mere forfeiture of land under Sec. 54 followed by restoration to the defaulting holder did not wipe out all the earlier rights and equities that may be subsisting as between private parties – ***Nagappa Gowda Vs. Gurupadappa, ILR 1953 Mys 408***

Distraint & sale of immovable property

The Tahsildar has the power to order the distraint and sale of the defaulter's moveable property and such distraint and sale is to be carried out by the prescribed procedure and officers or class of officers.

However any article kept exclusively for religious use or whatever is exempt from distraint or sale of any property under Code of Civil Procedure, 1908 in execution of a decree is also exempt from the aforesaid process.

Attachment and sale of immovable property

In addition to or instead of the methods provided in Sec.161 for the recovery of land revenue if the Tahsildar feels then he is empowered under Sec. 165 to cause any immoveable property of the defaulter to be attached and sold.

But the property of a minor descended to him by the regular course of inheritance is exempt from such attachment and sale.

How to make the attachment

To effect the attachment process an order should be made prohibiting the defaulter from transferring or charging the property in any way and all persons from taking any benefit from such transfer or charge.

Such an order should be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode and a copy of the order should by affixed on a conspicuous part of the property and also on the notice board of the office of the Revenue Officer making

such order.

Any transfer or charge created by the defaulter after the date on which an order is made such transfer or charge will be invalid as against the State Govt. or the auction purchaser at the sale of the property held for recovery of the arrears of land revenue subsequent to the attachment.

Claims to attached immoveable property

If any claim is setup by any person not claiming under the defaulter to the immoveable property attached under Sec.165 the Revenue Officer making the attachment should hold summary inquiry into the claim and after such inquiry may admit or reject the claim.

The person against whom an order is made after an inquiry is at liberty to file a suit to establish his right over the attached property within one year from the date of such order. However the order will be conclusive subject to the outcome of the suit.

Procedure for effecting sale of immovable property

Before effecting the sale of any land or other immovable property notices and proclamations should be issued by the Deputy Commissioner or other officer empowered in this behalf in the prescribed form and such notices and proclamations should also be published and a copy of that served on the defaulter.

Sale to be by auction

All sales of moveable or immoveable property should be held by public auction.

Case law

1. Fixation of reserved price less than the arrears if the property could fetch more is untenable – ***Achamma Cyriac Vs. Kerala State Financial Corporation AIR 1997 Kerala 75***

2. Sale cannot be conducted without proclamation – ***Lalchand Vs. VIII Additional District Judge & Ors. AIR 1997 Supreme Court 2106***

3. Failure to deposit sale price by the purchaser within the time fixed renders the sale a nullity – ***Balaram Vs. Ilam Singh & Ors. AIR 1996 SC 2718***

4. If the highest bid is inadequate the same can be refused – ***Navalka & Sons Vs. Ramanya Das AIR 1970 SC 2037***

Prohibition to bid at auction

An officer having any duty to perform in connection with any sale by auction and a person

employed by or subordinate to such officer should not bid for or acquire any property in such an auction.

Purchase of property by government

In case where there is no bid to sell the property the Tahsildar or any other officer duly authorised by him may purchase the property on account of the Govt. for a determined value.

When a property is purchased as above, the Tahsildar may adjust portion of the value necessary to cover the amount due to Government together with the cost of the sale and the defaulter will be entitled to obtain payment of balance of such value on an application.

Sale of perishables (Sec.172)

Perishable articles should be sold by auction with the least possible delay and such sale should be finally concluded by the officer conducting the sale, subject to orders made by the Deputy Commissioner.

Sale not to be excessive

The property to be sold moveable or immoveable should be proportionate to the amount of the arrear of land revenue to be recovered and the expenses of attachment and sale.

Deposit by purchaser of immoveable property

In all cases of sale of immoveable property, the party declared to be the purchaser should be required to deposit immediately 25% of the amount of his bid, and the balance within 15 days from the date of the sale.

Failure to make deposit

In default of the payment of the deposit referred as above, the property should be put up for re-sale forthwith and the expenses incurred in connection with the first sale should be borne by the defaulting bidder.

In default of payment of the balance of the bid amount within the said period, the deposit, should be forfeited to the State Government and the property shall be re-sold after deducting the expenses of the sale. Such re-sale should be made after issue of a fresh notice like the way for the original sale.

Any deficiency of price which may happen on a resale by reason of the purchaser's default and all expenses attending such resale will become recoverable from the defaulting purchaser

in the same manner as an arrear of land revenue.

Setting aside sale

If an immovable property has been sold, the defaulter or any person owning such property or holding an interest in it, may apply to the Deputy Commissioner to have the sale set aside within ninety days of the date of sale:

(a) on the ground of some material irregularity or mistake or fraud resulting in loss or injury to him, or

(b) on his depositing in the Deputy Commissioner's office the amount of the arrear specified in the proclamation of sale, the cost of the sale and for payment to the purchaser, a sum equal to 5% of the purchase money.

On an application made under clause (a) of sub-section (1), the Deputy Commissioner should, conduct inquiry to ascertain if there is any material irregularity, mistake or fraud in publishing or conducting the sale. If he finds these factors he has the power to set aside the sale and direct a fresh sale.

A sale should not be set aside on the ground of any irregularity or mistake, unless it is proved that the applicant has sustained loss or injury as a result of such irregularity or mistake.

The Deputy Commissioner should make an order setting aside the sale only after an application with the required deposit has been made under.

If more persons than one have made deposits and applied, the application of the first depositor or in case all the depositors agree to the application of any other depositor being accepted, the application of such depositor, shall be accepted.

Confirmation of sale

If, on the expiration of ninety days from the date of sale if no application has been made for setting aside the sale or if any such application has been made and rejected, the Deputy Commissioner should make an order confirming the sale.

The Deputy Commissioner has the power to set aside the sale for reasons to be recorded despite no application has been made, or on grounds other than those alleged in any application which has been made and rejected.

Refunds

The Deputy Commissioner should order the refund and payment to the purchases, of

(a) the amounts deposited by him under section 174, and

(b) the sum equal to five per centum of the purchase money in case of a deposit under clause (b) of sub-section (1) of section 176; if the sale of any immoveable property is not confirmed or is set aside.

The Deputy Commissioner has the power to order the refund and payment of all the moneys deposited under clause (b) of sub-section (1) of section 176 to the person, who made the deposit, if the sale is confirmed.

The Deputy Commissioner is also empowered to set off the whole or any part of any such moneys against any arrear of land revenue which may be outstanding against the person, who made the deposit.

Certificate of purchase

When a sale is confirmed, the Tahsildar should put the person declared to be the purchaser in possession of the property and should cause his name to be entered in the land records and should grant him a certificate in the prescribed form to the effect that he has purchased the property and such certificate will be deemed to be a valid transfer of such property.

Removal of obstruction

In a case where purchaser is resisted or obstructed by any person, in obtaining possession of the property, such purchaser may apply to the Civil Court having jurisdiction over the property, for removal of the same and such Court should investigate the matter as if the property were purchased by the applicant at a sale held in execution of a decree of such Court under the Code of Civil Procedure, 1908.

Application of proceeds of sale

The proceeds of the sale of any property should be applied in meeting the expenses of the sale, which should be determined accordingly and the balance should be applied to the payment of the arrears on account of which the sale was held and the surplus, if any, should be paid to the person whose property has been sold.

Liability of certified Purchaser

The person who has purchased should not be liable for the land revenue in respect of the land for any period prior to the date of the sale.

Recovery by attachment of the defaulter's village and taking it under management

If the holding, in respect of which an arrear is due, consists of an entire village or of a share of a village, the Deputy Commissioner has the power to attach and take control of such entire village or share of a village either himself or through an agent.

Lands of such village to revert to Government free of encumbrances

The lands of any village or shares of a village attached as above should revert to the State Government unaffected by the acts of the superior holder or of any of the sharers, or by any charges or liabilities subsisting against such superior holder or sharers as are interested therein, so far as the arrears of land revenue due are concerned, but without any prejudice in other respects to the rights of any tenant or any other person.

The Deputy Commissioner or his agent are entitled to manage the lands attached as above by letting them out at the prescribed rates by granting unoccupied lands on lease and to receive all rents and profits accruing from them to the exclusion of the superior holder or any of the sharers thereof, until the Deputy Commissioner restores the their management to the said superior holder.

The Deputy Commissioner or his agent are entitled to recover all such rents or profits accruing in or after the revenue year in which such attachment was effected, provided that proceedings for such recovery are taken within 6 years from the end of the revenue year for which such rent or profit became due.

Application of surplus profits

All surplus profits of the lands attached beyond the cost of such attachment and management, including the payment of the current revenue and the cost of the introduction of a revenue survey, which the Deputy Commissioner is hereby empowered to introduce, should be applied in defraying the said arrear.

Restoration of village so attached

The village or share of a village attached as above should be released from attachment and the its management should be restored to the superior holder, on the said superior holder

making an application to the Deputy Commissioner for that purpose at any time within 12 years from the first of July next after the attachment:

(a) if at the time that such application is made, it should appear that the arrear has been liquidated; or

(b) if the said superior holder shall be willing to pay the balance, if any, still due by him, and pays such balance within such period as the Deputy Commissioner may specify in this behalf.

The Deputy Commissioner should make over to the superior holder the surplus receipts, which have accrued in the year in which his application for restoration of the village or share of a village is made, after defraying all arrears and costs, but such surplus receipts, if any, of previous years shall be at the disposal of the State Government.

Village, etc., to vest permanently in the State Government if not redeemed within twelve years

If no application is made for the restoration of a village or share of a village within the aforesaid period of 12 years, or if after such application has been made, the superior holder fails to pay the balance, still due by him within the period specified by the Deputy Commissioner, the said village or share of a village will thenceforward vest in the State Government, free from all encumbrances created by the superior holder or any of the sharers or any of his or their predecessors in title or in any wise subsisting as against such superior holder or any of the shares, but without prejudice to the rights of the persons in actual possession of the land.

Recovery of other public demands

The following moneys may be recovered under this Act in the same manner as an arrear of land revenue, namely:—

(a) all rents, royalties, water rates, ceases, fees, charges, premia, penalties and fines due to the State Government, for use or occupation of land or water or any product of land;

(b) all moneys due to the State Government under any grant, lease or contract, which provides that they shall be recoverable as arrears of land revenue;

(c) all sums declared by this Act or any other law for the time being in force to be recoverable as an arrear of land revenue.

Recovery of moneys from surety

Every person who may have become a surety to a transaction under which the sum secured is recoverable from the principal as an arrear of land revenue, should, on failure to pay the amount or any portion, which he may have become liable to pay under terms of his security bond, be liable to be proceeded against.

Recovery of arrears due in any one district by Deputy Commissioner of another district

When an arrear of land revenue or other public demand recoverable as an arrear of land revenue is due in one district, but is to be recovered by sale of defaulter's property in any other district, the Deputy Commissioner of the district in which such arrear of demand became due should send a certified statement of account to the Deputy Commissioner of that district.

On receipt of such certified statement the Deputy Commissioner of one district should proceed to recover the demand of the Deputy Commissioner of another district as if the demand arose in his own district.

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UNIT – 4

SYNOPSIS OF UNIT

- Karnataka SC & ST (Prohibition of Transfer of Certain Lands) Act, 1978
- General Provisions Regarding Tenancies
- Conferment of Ownership on Tenants
- Ceiling on Land Holdings
- Restrictions on Holding or Transfer of Agricultural Lands
- Co-operative Farms
- Land Reforms in India During 1947-70
- 9th Schedule of Indian Constitution and Judicial Scrutiny
- Bibliography

Synopsis of Topic

- *Object:*
- *Prohibition of transfer of granted lands*
- *Case law*

Karnataka SC & ST (Prohibition of Transfer of Certain Lands) Act

Object:

The Act aims to provide for the prohibition of transfer of and for restoration of certain lands granted by government to persons belonging to the Scheduled Castes and Scheduled Tribes in the State of Karnataka.

Prohibition of transfer of granted lands

Transfer of granted land made either before or after the commencement of this Act, in contravention of the terms of the grant of such land or the law providing for such grant will be null and void and no right, title or interest in such land will be conveyed or be deemed

ever to have conveyed by such transfer.

Any person should not transfer or acquire by transfer any granted land without the previous permission of the Government.

This will apply also to the sale of any land in execution of a decree or order of a civil court or of any award or order of any other authority.

Case law

The alienations referred to Section 4 can only be construed as alienations made by the grantees in favour of individual person/persons only and has no application to transfer of granted lands in favour of the Government, the Central Government, a Local Authority or a Bank which are excluded from the purview of the Act. The word 'person' used in a public statute includes both a natural person (a human being) and an artificial person (a Corporation etc.). It is plain that in common speech 'person' would mean a natural person. In technical language, it may mean the other, but which meaning it has in a particular Act must depend on the context and the subject-matter. In the light of this principle of interpretation and in the context of the provisions of the SC/ST Act, prohibiting alienation of granted lands, and having' regard to Section 7 in particular, the person alienee 'should be' understood only as a natural person and none else - ***B.Shivappa Vs. State Of Karnataka, ILR 1990 KAR 1089***

The object of the Act is in keeping pace with the provisions of Articles 38 and 46 of the Constitution. Article 46 directs the State shall promote with special care the educational and economic interests of the weaker sections of the peoples and in particular of scheduled castes and scheduled tribes and shall protect them from social injustice and all forms of exploitation. The Act and the provisions of Sec.4 and 5 have this very object and with this object the Act has been enacted. The object of the Act is to provide for prohibition of transfer of certain lands granted by the Govt. to persons belonging to scheduled castes and scheduled tribes. The provision being in furtherance of the very Directive Principles of State Policy comes within the protection of Art.31-C. In the 9th schedule to the Constitution vide Entry 222 this Act has been included and it having been included in the 9th schedule, Article 31-B is also applicable to this Act. In view of these provisions of Articles 31-B and 31-C and the Act having been included in the 9th schedule vide Entry 222, the contention and challenge is not open to the Petitioner. Hence the transfer in this case in absence of any pervious permission from the Govt. is null and void. – ***G.Maregouda Vs. Deputy Commissioner, Chitradurga District, Chitradurga & Ors., 2000(2) Kar.L.J. Sh.N.4A***

Resumption and restitution of granted lands

If an application is made by any interested person or after receiving any information given in writing by any person or suo-motu and after conducting an enquiry if the Assistant Commissioner is satisfied that the transfer of any granted land is null and void as above he is empowered to

(a) by order take possession of such land after evicting all persons in possession thereof in such manner as may be prescribed.

(b) restore such land to the original grantee or his legal heir.

In case if it is not reasonably practicable to restore the land to such grantee or legal heir; such land should be deemed to have vested in the Government free form all encumbrances. The Government has the power to grant such land to a person belonging to any of the Scheduled Castes or Scheduled Tribes in accordance with the rules relating to grant of land.

After an enquiry referred as above the Assistant Commissioner has the power to pass a suitable order if he is satisfied that transfer of any granted land is not null and void.

Appeal to the Deputy Commissioner

Any person aggrieved by an order passed after the commencement of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) (Amendment) Act, 1984 by the Assistant Commissioner to take possession of land or to restore the land may prefer an appeal to the Deputy Commissioner having jurisdiction within a period of three months from the date on which the order was communicated to him.

The Deputy Commissioner may admit an appeal preferred against such order after the said period if satisfied that the appellant had sufficient cause for not preferring the appeal within that period.

The Deputy Commissioner may admit an appeal against an order passed by the Assistant Commissioner if a writ petition preferred against such order or an appeal preferred against the order passed in such writ petition is pending in any court.

Any person aggrieved by an order passed after the commencement of the Karnataka Scheduled Castes and Scheduled Tribes (Prohibition of Transfer of Certain Lands) (Amendment) Act, 1992, by the Assistant Commissioner under sub-section (1A) of section 5, may prefer an appeal to the Deputy Commissioner having jurisdiction within a period of three

months from the date on which the order was communicated to him.

Case law

The assistant commissioner has refused to pass an Order directing delivery of possession of the land in question presumably on the ground that the original grantee's son (sakrya naika) has remained absent on the date of enquiry. The said approach of the assistant commissioner, which has also been affirmed by the deputy commissioner in the appeal, is totally erroneous in law and runs counter to the very object of the act. It is relevant to point out that under sub-section (1) of Section 5 of the act, power is conferred on the assistant commissioner to initiate proceedings and pass appropriate orders as provided under Section 5 of the act, under three circumstances, namely, (i) on an application filed by an interested person; (ii) on an information given by any person; or (iii) suo motu. Clauses (a) and (b) of sub-section (1) of Section 5 of the Act make it clear that once the sale transaction is declared as null and void by the assistant commissioner, the assistant commissioner is required to take possession of the land after evicting all the persons in possession of the said, land and restore possession of such land to the original grantee or his legal heir. The object of the Act is to declare the sale of the lands made in violation of the terms of the grant as null and void and to restore possession of such lands to the original grantees or their legal heirs. Under these circumstances, I am of the view that the assistant commissioner has seriously erred in law in not passing an Order directing restoration of possession of the land in question to the petitioner in this petition, on the ground that the petitioner was not present at the time of enquiry. While the power conferred on the assistant commission under Section 5 of the ACT is quasi-judicial in nature, in my view, it does not give any discretion to the assistant commissioner to refuse to give a direction for restoration of possession of the granted land either to the original grantee or his legal heirs, if they are available, on the ground that they were not present at the time of enquiry. It is only in case where it is not reasonably practicable to restore the land to such grantee or his legal heir, the land vests with the state government free from all encumbrances. The provisions made under clause (b) of sub-section (1) of Section 5 of the ACT to vest such land in the state government where it is not reasonably practicable to restore such land to the grantee or his legal heir, clearly indicates that an attempt should be made by the authorities to trace the original grantee or his legal heir. It is only when such a grantee or his legal heir is not available to take possession of the land, the land vests with the state government. This interpretation is required to be placed on

Section 5 of the ACT having regard to the object of the ACT and keeping in mind the social and cultural background, illiteracy, poverty of the scheduled castes and scheduled tribes and the possibility of they being prevented from participating in the proceedings by the purchasers of such granted land – ***Motyappa Vs. Deputy Commissioner, Shimoga & Anr. 1997(5), Kar.L.J. 574C***

Prohibition of registration of transfer of granted lands

Sec.6 prohibits any registering officer from accepting for registration any document relating to the transfer of, or to the creation of any interest in, any granted land included in a list of granted lands furnished to the registering officer except where such transfer is in accordance with this Act or the terms of the grant of such land or the law providing for such grant.

Exemption

Transfer of granted lands in favour of the Government, the Central Government, a local authority or a bank either before or after the commencement of this Act are exempt from the application of this Act.

Synopsis of Topic

- *Extension of Transfer of Property Act to agricultural land (Sec.3)*
- *Persons to be deemed tenants (Sec.4)*
- *Prohibition of leases (Sec.5)*
- *Tenancy is not terminated by efflux of time (Sec.6)*
- *Restoration of possession to tenants dispossessed in certain circumstances (Sec.7)*
- *Rent (Sec.8)*
- *Rent when deemed as paid and dispute regarding rent payable(Sec.9)*
- *Rights and liabilities of landlord (Sec.10)*
- *Liability to pay land revenue, etc (Sec.10-A)*
- *Refund of rent recovered in contravention of provisions of the Act (Sec.11)*
- *Abolition of all cesses, etc (Sec.12)*
- *Suspensions, remissions or reduction of rent (Sec.13)*
- *Resumption of land by soldier or seaman (Sec.15)*
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- *Failure to cultivate, etc (Sec.20)*
- *Sub-division, sub-letting and assignment prohibited (Sec.21)*
- *Eviction of tenant for default, etc.,(Sec.22)*
- *Eviction not to be ordered if rent paid during pendency of proceedings (Sec.23)*
- *Rights of tenant to be heritable (Sec.24)*
- *Surrender of land by tenant (Sec.25)*
- *Tenancy in abeyance during usufructuary mortgage in favour of tenant (Sec.26)*
- *Tenant's rights to trees planted by him (Sec.27)*
- *Tenants responsible for maintenance of boundary marks (Sec.29)*

- *Repairs of protective bunds (Sec.30)*
- *Tenant's right to erect farm house (Sec.31)*
- *Betterment contribution (Sec.32)*
- *Receipts for rent (Sec.33)*
- *Bar to attachment or sale by process of Court (Sec.34)*
- *Bar to eviction from dwelling house (Sec.35)*
- *Site on which dwelling house is built to be sold to tenant (Sec.36)*
- *Tenant's right to purchase site (Sec.37)*
- *Dwelling houses of agricultural labourers, etc (Sec.38)*
- *First option to purchase land (Sec.39)*
- *Compensation for improvement made by tenant (Sec.40)*
- *Procedure for taking possessions (Sec.41)*
- *Procedure for recovery of rent (Sec.42)*
- *Rights or privileges of tenant not to be affected (Sec.43)*

General Provisions Regarding Tenancies

Secs.3 to 43 of Chapter II of the Karnataka Land Reforms Act 1961 deals with the general provisions of tenancies pertaining to agricultural lands. Let's discuss the provisions one after the other.

Extension of Transfer of Property Act to agricultural land

Sec. 3 mandates the extension of application of Transfer of Property Act 1882 to the agricultural land and the terms 'property' and 'immovable property' used in the Transfer of Property Act should include agricultural lands. That is to say any transfer of agricultural lands is subject the laws mentioned in the Transfer of Property Act.

The tenancy and leases to which the Land Reforms Act applies are subject to the prohibition and limitations prescribed under Sec.108(o) of the Transfer of Property Act.

Case law

Where a person after taking agricultural land on lease for non-agricultural purpose uses it for

agricultural purpose his cultivation would not be lawful under Sec.108(o) of the Transfer of Property Act and he is not entitled to claim any benefit under the Land Reforms Act. A lessee cannot be permitted to take advantage of a wrong committed by him by using the land leased for agricultural purpose than for which it was leased to claim the benefit under the Act – ***Bhamy Panduranga Shenoy Vs. B.H.Ravindra, 1980 (2) KLJ 129***

The doctrine of merger under the Transfer of Property Act does not apply to a case of lease followed by a mortgage. Sec.111 of the Transfer of Property Act is modified by Sec.26 of Land Reforms Act so far as agricultural lands are concerned and question of implied surrender does not arise – ***Melegowda Vs. Gaibu Sab, 1978(1) KLJ 155***

Persons to be deemed tenants

Under Sec.4 a person who is lawfully cultivating any land belonging to another person is deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not:

(a) a member of the owner's family, or

(b) a servant or a hired labourer on wages payable in cash or kind but not in crop share cultivating the land under the personal supervision of the owner or any member of the owner's family, or

(c) a mortgagee in possession

However in case if the owner makes an application within one year from the appointed day and the Tribunal declares that such person is not a tenant and its decision is not reversed on appeal or the Tribunal refuses to make such declaration but its decision is reversed on appeal then in that case such person should not be deemed to be a tenant.

Case law

In ***Parameshwar Timmayya Hegde Vs. Venkataraman Manjappa Hegde (deceased) by LR's 2000(5) Kar.L.J, 456*** it was held that deemed tenancy must be pleaded and in the absence of pleadings no presumption can be raised.

Where cultivation of land by person is without Authority of real owner of land, claim for deemed tenancy on basis of such cultivation being carried on is not sustainable - ***Kanthu Vs. the Land Tribunal Siddapur, Uttara Kannada District & Ors., 2001(2) Kar.L.J. 477B.***

Deemed tenancy is available only in the case of tenant who is lawfully cultivating the lands.

Admittedly in the case on hand the real owner, the Mutt has not permitted or granted the Respondent to cultivate the land belonging to Mutt. Therefore Sec.4 is not available to the Petitioner.

Prohibition of leases

Tenancy should be not created or continued in respect of any land nor should any land be leased for any period whatsoever.

Nothing in sub-section (1) will apply to;

(a) a tenancy created or continued by a soldier or seaman if such tenancy is created or continued while he is serving as a soldier or a seaman or within three months before he became a soldier or a seaman.

(b) to any land leased after the commencement of the Karnataka Land Reforms (Amendment) Act, 1995 in the districts of Uttara Kannada and Dakshina Kannada by land owners or persons registered as occupants under the provisions of this Act for the purpose of utilising the land for aquaculture for a period not exceeding twenty years, at such lease rent as may be determined by mutual agreement between the parties and such agreement should be registered and a copy thereof should be sent to the Deputy Commissioner within fifteen days from the date of such registration.

Every such lease created should be in writing.

Tenancy is not terminated by efflux of time (Sec.6)

As per Sec.6 no tenancy of any land should be terminated merely on the ground that the period fixed for its duration whether by agreement or otherwise has expired.

Case law

Where a lease was for five years on an yearly basis, merely because the rentals amount for the period of five years had been paid in advance and there was a recital that after expiry of five years possession of the land must be given to the landlord it cannot be said that the same have the effect of converting the lease into a mortgage. In view of Sec.6 of the Act, the recital to surrender possession after five years can have no consequence. In view of this position of law, the Tribunal has erred in not granting occupancy rights to the Petitioner – ***Mallappa Vs. Land Tribunal, Nargund & Ors. 1996(2) Kar.L.J 72***

Restoration of possession to tenants dispossessed in certain circumstances(Sec.7)

A person who or whose predecessor-in-title held any land as a tenant who has been dispossessed from such land either by surrender of the tenancy or by eviction may apply to the Tribunal within fifteen months from the appointed day for the restoration of his tenancy unless the land has been put to non-agricultural use.

On receipt of an application the Tribunal should inquire into the circumstances in which and the procedure under which such dispossession took place and if it is satisfied that such dispossession took place as a result of:

a) surrender and the consent of the tenant was procured by fraud, misrepresentation or undue influence or pressure of any kind whatsoever or was otherwise in contravention of the provisions of the law applicable for the time being; or

b) expiry of the duration of tenancy; or

c) any act of the landlord or any person acting on his behalf without recourse to a court of law or in contravention of any provision of law,

the Tribunal should order the restoration of possession of the land and the tenancy thereof to the tenant.

Subsequently such land will be deemed to have vested in the State Government and the provisions of the Act will apply to such tenant as if he had been ordered to be registered as an occupant.

The Tribunal should not order restoration of possession of the land, if it is satisfied that the land is held on lease bona fide by a tenant who is not a member of the family of the landlord, or the dispossession, by surrender of the tenancy or by eviction, took place in accordance with any provision of law, or that another person, not being the landlord, is legally entitled to possession of the land.

Rent(Sec.8)

(a) the rent payable in respect of any land by the tenant will be payable annually; and

(b) such rent should be the aggregate of ten times the land revenue and ten times the water rate, if any, payable in respect of such land

Rent when deemed as paid and dispute regarding rent payable(Sec.9)

Where the landlord evades receiving the rent and giving a receipt, the tenant will be deemed to have paid the rent if he sends the same by postal money order to or deposits it with the

Tahsildar.

A dispute between the landlord and the tenant as regards the rent payable should be determined by the Tahsildar on the application of the landlord or the tenant.

Rights and liabilities of landlord(Sec.10)

In the case of land in respect of which the rent is payable under section 8

(a) the landlord will not be liable to make any contribution towards the cost of cultivation of the land in the possession of a tenant;

(b) no landlord or any person on his behalf should recover or receive rent either in kind or in terms of service or labour.

Liability to pay land revenue, etc(Sec.10-A)

The tenant will be responsible for the payment of the land revenue, water rate and all cesses or fees levied thereon to the State Government or a local authority in respect of the land held by him on lease.

Refund of rent recovered in contravention of provisions of the Act(Sec.11)

If any landlord or any person on his behalf recovers rent from any tenant in contravention of the provisions of section 8, 9 or 10, the landlord should forthwith refund the excess amount so recovered to the tenant and should be liable to pay such compensation to the tenant as may be determined by the Tahsildar in this behalf, and will also be liable to penalty not exceeding twice the excess amount recovered as the Tahsildar may fix.

Abolition of all cesses, etc(Sec.12)

It is not lawful for any landlord to levy any cess, rate, premium, huk or tax or service of any description or denomination whatsoever from any tenant in respect of any land held by him as a tenant other than the rent lawfully due in respect of such land.

Suspensions, remissions or reduction of rent (Sec.13)

In case due to some reason the payment of the entire land revenue payable to the State Government is suspended or remitted, the landlord should partially or fully suspend or remit receiving the rent of such land from his tenant.

If no land revenue is payable to the State Government and due to some reason, the payment of the land revenue payable to the State Government partly or wholly in the neighbourhood

of such land has been suspended or remitted, the Deputy Commissioner has the power to suspend or remit the payment of the rent or part of it to the landlord.

A landlord should not institute any suit or other proceeding and execute a decree or order of a civil court or other authority for recovery of any rent that has been remitted or during the period of payment of such rent as above.

If any landlord fails to suspend or remit the payment of rent as provided above, he will be liable to refund the amount to the tenant which has been recovered by him in contravention of this section. The tenant is at liberty to apply to the Tahsildar for the recovery of such amount, and the Tahsildar has the power to make an order for the refund and for payment of such penalty not exceeding the amount so recovered as the Tahsildar may fix. But before making such an order.

After conducting an inquiry the Tahsildar is empowered to reduce the rent payable for any year, if the Tahsildar is satisfied that on account of the deterioration of the land by flood or other cause beyond the control of the tenant, the land has been wholly or partially rendered unfit for cultivation, or there has been damage to crops. However the Tahsildar can do so only on an application filed by the tenant or landlord at any time during the currency of the tenancy.

Resumption of land by soldier or seaman

A soldier or a seaman who has created or continued a lease in accordance with the provisions of section 5 should be entitled to resume land to the extent of the ceiling area whether his tenant is a protected tenant or not.

The soldier or the seaman can issue a notice to the tenant requiring him to deliver possession of the land within a specified period if he bona fide requires the land to cultivate personally.

If the tenant fails to deliver possession of the land within the specified period the soldier or the seaman may make an application to the jurisdictional Tahsildar seeking eviction of the tenant and delivery of possession of the land.

On receipt of such application, the Tahsildar should issue a notice to the tenant calling upon him to deliver possession of the land to the soldier or the seaman within a specified period and if the tenant fails to comply, the Tahsildar has the power to summarily evict the tenant and deliver possession of the land to the soldier or the seaman.

On application by the tenant or otherwise and after such enquiry as may be prescribed, if the Tahsildar, is satisfied that a requisite notice is not issued, he should declare that with effect from a particular date the land leased will stand transferred to and vest in the State Government free from all encumbrances. Subsequently the Tahsildar has the power to take possession of the land in the and the tenant is be entitled to be registered as an occupant thereof.

Restriction on transfer of resumed land

Land resumed from a tenant should not be transferred by sale, gift, exchange or otherwise within fifteen years from such resumption.

Such land may be sold to the tenant who on resumption had been evicted from that land, at a value to be determined by the Tahsildar.

Further such land may be sold by the father, mother, spouse, child or the grand child of a soldier who has died during service and who was dependent upon such soldier at the time of his death.

It will be lawful for a landowner to take a loan and mortgage or create a charge on his interest in the land in favour of the State Govt. or any financial institution for development of land or improvement of agricultural practices and in the event of his making default in payment of such loan in accordance with the terms and conditions of loan, it will be lawful to cause his interests in the land to be attached and sold and the proceeds to be utilised in payment of such loan.

Failure to cultivate, etc

If the Tahsildar is satisfied that a person who has taken possession of any land by evicting a tenant in order to cultivate it personally or use if for non-agricultural purposes has failed to do so he may declare by notification that the such land will stand transferred to and vest in the State Govt. free from all encumbrances.

If such tenant wants to be registered as occupant after the land has so vested he should make an application in this regard within 12 months from the date of such notification.

Sub-division, sub-letting and assignment prohibited

Any sub-division or sub-letting of the land held by a tenant or assignment of any interest therein will be invalid.

Nothing in this section will affect the rights of a permanent tenant.

Further if the tenant dies

(i) if he is a member of a joint family, the surviving members of the said family, and

(ii) if he is not a member of a joint family, his heirs, will be entitled to partition and sub-divide the land leased, subject to the following conditions:—

a. each sharer should hold his share as a separate tenant;

b. the rent payable in respect of the land leased should be apportioned among the sharers, according to the share allotted to them;

c. the area allotted to each sharer should not be less than a fragment;

d. if such area is less than a fragment the sharers will be entitled to enjoy the income jointly, but the land should not be divided by metes and bounds;

e. if any question arises regarding the apportionment of the rent payable by the sharer it should be decided by the Tahsildar.

If any question of law is involved the should refer it to the Court and on receipt of such reference the Court should try the question as expeditiously as possible and record finding and send the same back to the Tahsildar. The Tahsildar will have to then give the decision in accordance with the said finding.

However it will be lawful for a tenant who is a soldier in service in the Armed Forces of the Union or a seaman to sub-let the land held by him as a tenant.

It will also be lawful for a tenant to take a loan and mortgage or create a charge on his interest in the land in favour of the State Government or any financial institution for development of land or improvement of agricultural practices and without prejudice to any other remedy provided by any law, in the event of his making default in payment of such loan in accordance with the terms and conditions on which such loan was granted, it will be lawful to cause his interest in the land to be attached and sold and the proceeds to be utilised in payment of such loan.

Eviction of tenant for default, etc.,

No person should be evicted from any land held by him as a tenant except on any of the

following grounds, namely:

a. that the tenant has failed to pay the rent of such land on or before the due date during two consecutive years, provided the landlord has issued every year within three months after the due date, a notice in writing to the tenant that he has failed to pay the rent for that year;

b. that the tenant has done any act which is permanently injurious to the land;

c. that the tenant has sub-divided, sublet or assigned the land in contravention of section 21;

d. that the tenant has failed to cultivate the land personally for a period of two consecutive years;

e. that the tenant has used such land for a purpose other than agriculture.

No tenant should be evicted as provided above unless the landlord has given three months notice in writing informing the tenant of his decision to terminate the tenancy and the particulars of the ground for such termination, and within that period the tenant has failed to remedy the breach for which the tenant is proposed to be evicted.

Eviction not to be ordered if rent paid during pendency of proceedings

The Tahsildar should not order possession to be restored to the landlord on the ground of default in paying rent, if during the pendency of any proceeding for such restoration of possession, the tenant pays to the landlord the arrears of rent for two consecutive years, together with the costs of the proceedings, within a specified period.

Rights of tenant to be heritable

In case if a tenant dies the landlord should be deemed to have continued the tenancy to the heirs of such tenant on the same terms and conditions on which such tenant was holding at the time of his death.

Surrender of land by tenant

No tenant of a soldier or seaman should surrender any land held by him as tenant except in favour of the State Government.

Any such surrender will not be effective unless made in writing and the tenant has admitted the same before the Tahsildar and the same has been registered in the office of the Tahsildar.

In respect of the land surrendered to it as above, the State Government should pay to the landlord rent calculated accordingly.

The State Government has the power to lease the surrendered land to any person if possession thereof is not claimed by the soldier or the seaman for personal cultivation.

Where the State Government leases the land as above the lessee should pay the rent for the land to the landlord directly and with effect from the date of such lease the State Government's liability for payment of rent of the land will cease.

Tenancy in abeyance during usufructuary mortgage in favour of tenant

If any land is mortgaged by a landlord by way of a usufructuary mortgage to a tenant cultivating such land, the tenancy of such land will be in abeyance during the period the mortgage subsists. After the expiry of the such period it will be lawful to the tenant to continue to hold the land on the terms and conditions on which he held it before the mortgage was created.

Tenant's rights to trees planted by him

If a tenant has planted or plants any trees on any land leased to him, he will be entitled to the produce and the wood of such trees during the continuance of his tenancy and will be entitled to compensation for the said trees as may be determined by the Tahsildar, on the termination of his tenancy.

Tenants responsible for maintenance of boundary marks

The responsibility for the maintenance and good repair of the boundary marks of lands held by a tenant and any charges reasonably incurred on account of service by revenue officers in case of alteration, removal or repair of such boundary marks will be upon the tenant.

Repairs of protective bunds

If it appears to the Assistant Commissioner that the construction, maintenance or repair of any bunds protecting any land held by a tenant is neglected owing to a dispute between the landlord and the tenant or for any other reason, the Assistant Commissioner is empowered make an order directing that the construction, maintenance or repair should be carried out and the costs should be recoverable as arrears of land revenue from the person who is liable to construct, maintain or repair the bunds.

Tenant's right to erect farm house

A tenant is entitled to erect a farm house reasonably required for the convenient or profitable use or occupation of the holding, on the land held by him as a tenant.

Betterment contribution

If at any time any amount is levied or imposed by the Government on a land held by a permanent tenant as betterment contribution under the provisions of the Karnataka Irrigation (Levy of Betterment Contribution and Water Rate) Act, 1957, or under any other provision of law, the permanent tenant thereof will be liable to pay such amount to the Government

Receipts for rent

In the absence of an express intimation in writing to the contrary by a tenant, every payment made by a tenant to the landlord should be presumed to be a payment on account of rent due by such tenant for the year in which the payment is made.

When any rent is received in respect of any land by a landlord or by a person on behalf of such landlord, the landlord or such person should at the time when such rent is received by him give a written receipt for that.

Bar to attachment or sale by process of Court

No interest of a tenant in any land held by him as a tenant will be liable to be attached, seized or sold in execution of a decree or order of a civil court.

Bar to eviction from dwelling house

If in any village, a tenant is in occupation of a dwelling house on a site belonging to his landlord, such tenant should not be evicted from such dwelling house (with the materials and the site thereof and the land immediately appurtenant thereto and necessary for its enjoyment), unless:

a. the landlord proves that the dwelling house was not built at the expense of such tenant or any of his predecessors-in-title; and

b. such tenant makes default during three consecutive years in the payment of rent, if any, which he has been paying for the use and occupation of such site.

Site on which dwelling house is built to be sold to tenant (Sec.36)

If a landlord having a site intends to sell it should be sold only to the tenant at the expense of whom or of any of whose predecessors in-title the dwelling house has been built.

The price payable by the tenant for such site should be an amount equal to ten times the land revenue payable and where such site is not assessed to land revenue, an amount equal to ten times the land revenue which may be assessed if it had been used for agricultural purposes and any sale which is not as provided above will be null and void.

Tenant's right to purchase site (Sec.37)

If a tenant referred to in section 35 intends to purchase the site on which a dwelling house is built, he should give notice in writing to the landlord to that effect.

If the landlord refuses or fails to accept the offer and execute the sale deed within three months from the date thereof, the tenant may apply to the Tahsildar who should require the tenant to deposit with him the sale price within ninety days from the date of the order. When such deposit is made the site should be deemed to have been transferred to the tenant and the Tahsildar should grant a certificate to the tenant.

Dwelling houses of agricultural labourers, etc

If, in any village, an agricultural labourer is ordinarily residing in a dwelling house on a land not belonging to him, then such dwelling house along with the site thereof and land immediately appurtenant thereto and necessary for its enjoyment, will vest absolutely in the State Government, free from all encumbrances and the agricultural labourer will be entitled to be registered as owner thereof.

First option to purchase land

If a landlord at any time intends to sell the land held by a tenant, he should give notice in writing of his intention to such tenant and offer to sell the land to him. In case the latter intends to purchase the land, he should intimate in writing his readiness to do so within two months from the date of receipt of such notice.

If there is any dispute about the reasonable price payable for the land, either the landlord or the tenant may apply in writing to the Tahsildar for determining the reasonable price and the Tahsildar after giving notice to the other party and to all other persons interested in the land and after making such inquiry should fix the reasonable price of the land which should be the average of the prices obtaining for similar lands in the locality during the ten years immediately preceding the date on which the application is made.

In this regard the tenant should deposit with the Tahsildar the amount of the price determined as above within the specified period.

On deposit of the entire amount of the reasonable price, the Tahsildar should issue a certificate to the tenant declaring him to be the purchaser of the land and also direct that the reasonable price deposited be paid to the landlord.

If a tenant does not exercise the right of purchase in response to the notice given to him by the landlord as above or fails to deposit the amount of the price as required such tenant will forfeit his right of purchase, and the landlord will be entitled to sell such land to any other person in accordance with the provisions of this Act.

Compensation for improvement made by tenant

If tenant's tenancy is terminated under the provisions of this Act and if he has made an improvement on the land held by him he will be entitled to compensation for such improvement.

The compensation to which a tenant is entitled as above should be the estimated value of such improvement at the time of the termination of his tenancy.

In estimating such value regard should be had to:

a. the amount by which the value of the land is increased by the improvement;

b. the present condition of the improvement and the probable duration of its effects;

c. the labour and capital provided or spent by the tenant for the making of the improvement; and

d. any reduction or remission of rent or other advantage allowed to the tenant by the landlord in consideration of the improvement including permanent fixtures.

Procedure for taking possessions

A tenant or an agricultural labourer entitled to possession of any land or dwelling house or site under any of the provisions of this Act or as a result of eviction may apply in writing for such possession to the Tahsildar.

Such application should be made within a period of two years from the date on which the right to obtain possession of the land, dwelling house or site is deemed to have accrued to the tenant, agricultural labourer.

No landlord should obtain possession of any land, dwelling house or site held by a tenant except under an order of the Tahsildar. For obtaining such order he should make an application and within a period of two years from the date on which the right to obtain possession of the land, dwelling house or site, is deemed to have accrued to him.

Any person taking possession of any land, dwelling house or site except in accordance with the provisions of sub-section (1) or (2), should be liable to forfeiture of crops, if any, grown on the land in addition to payment of costs as may be directed by the Tahsildar and also to the penalty.

Procedure for recovery of rent

No suit or other proceeding will lie in any Court or before any other authority for recovery of any rent payable by a tenant, except as provided in this section.

A landlord claiming payment of rent by a tenant may apply to the Tahsildar for an order directing the tenant to pay the rent due to the landlord.

On receipt of an application as above after the Tahsildar should, pass order accordingly after holding an inquiry.

An application under this section should be filed within one year from the date the rent fell due.

Rights or privileges of tenant not to be affected

The rights and privileges of any tenant under any usage or law for the time being in force or arising out of any contract, grant, decree or order of a court will not be limited or abridged.

Synopsis of Topic

- *Vesting of lands in the State Government*
- *Tenants to be registered as occupants of land on certain conditions*
- *When tenant can choose land*
- *Amount payable*
- *Tribunal*
- *Constitution of Tribunal*
- *Procedure of enquiry by the Tribunal*
- *Tahsildar to determine the amount payable*
- *Interim Orders*
- *Sub-tenants of tenants to be registered as occupants*
- *Determination of encumbrances and payment of the amount*
- *Mode of payment*
- *Payment of premium by tenant*
- *Establishment of a separate fund*
- *Premium recoverable as arrears of land revenue*
- *Issue of certificate of registration*
- *Provisions applicable to minors, persons under disability, etc*
- *Vesting in the State Government of land leased contrary to the Act*
- *Failure to cultivate personally*
- *Restriction on transfer of land of which tenant has become occupant*
- *Surrender of land to State Government*

Conferment of Ownership on Tenants

Secs.44 to 62 of Karnataka Land Reforms Act, 1961 deal with the conferment of ownership on tenants and regulate relationship between the tenant, landlord, owner and Govt.

Vesting of lands in the State Government

Sec.44 states that all lands which are held by or that which are in the possession of tenants immediately prior to the date of commencement of the Amendment Act of 1974 with effect from its date stand transferred to the State Government.

With effect from the date of such vesting of lands with Govt. the following consequences will ensue, namely:

(a) all rights, title and interest vesting in the owners of such lands and other persons interested in such lands will cease and be vested absolutely in the State Government free from all encumbrances

(b) all amounts in respect of such lands which become due on or after the date of vesting will become payable to the State Government and not to the land-owner, land-lord or any other person and any payment made in contravention of this will not be valid.

(c) all arrears of land revenue, cesses, water rate or other dues remaining lawfully due on the date of vesting in respect of such lands will be recoverable from the land-owner, landlord or other person by whom they were payable and may be realised by the deduction of the amount of such arrears from the amount payable to any person.

(d) no such lands will be liable to attachment in execution of any decree or other process of any Court and any attachment existing on the date of vesting and any order for attachment passed before the said date in respect of such lands will cease to be in force.

(e) the State Government may, after removing any obstruction take possession of such lands forthwith.

The State Government should not dispossess any person of any land in respect of which it considers that he is prima face entitled to be registered as an occupant.

(f) the land-owners, landlord and every person interested in the land whose rights have vested in the State Government will be entitled only to receive the amount from the State Government.

(g) permanent tenants, protected tenants and other tenants holding such lands will be entitled only to such rights or privileges and conditions as are provided and any other rights and privileges which may have accrued to them in such lands before the date of vesting against the landlord or other person will cease and determine and will not be enforceable against the

State Government.

Case law

The impugned order was passed by the Tahsildar under Sec.44(1) of the Karnataka Land Reforms Act, 1961 holding that the lands are vested in the State Govt. it is the Tribunal which is required to adjudicate upon the question whether the land is vested in the State Govt. under Sec.44 and the Tahsildar has no such power. Therefore the impugned order passed by Tahsildar is without jurisdiction and it is a void order and it requires to be quashed. Consequently the entries that have been made pursuant to that order are also liable to be quashed – ***Smt. Lalitabai & Ors. Vs. State of Karnataka & Ors., 1995(6) Kar.L.J. 239A.***

Tenants to be registered as occupants of land on certain conditions

Every person who was a permanent tenant, protected tenant or other tenant or where a tenant has lawfully sublet, such sub-tenant is entitled to be registered as an occupant in respect of the lands which he has been cultivating personally with effect from the date of vesting.

If a such tenant or other person

(i) holds land partly as owner and partly as tenant but the area of the land held by him as owner is equal to or exceeds a ceiling area in

(ii) that case he will not been entitled to be registered as an occupant of the land held by him as a tenant before the date of vesting;

(iii) does not hold and cultivate personally any land as an owner, but holds land as tenant, which he cultivates personally in excess of a ceiling area, then he is entitled to be registered as an occupant to the extent of a ceiling area;

(iv) holds and cultivates personally as an owner of any land the area of which is less than a ceiling area, then he is entitled to be registered as an occupant to the extent of such area as will be sufficient to make up his holding to the extent of a ceiling area.

If any land is held by a person before the date of vesting and in respect of which land he is not entitled to be registered as an occupant will be disposed of after evicting such person.

When tenant can choose land

If any tenant entitled to be registered as an occupant held land from one or more than one landlord, such tenant is entitled to choose the area and the location of the land of which he

wishes to become the registered occupant.

Amount payable

Every land-owner, landlord and all other persons interested in the land are entitled to an amount determined with reference to the net annual income derivable from the land or all the lands for the extinguishment of their rights in the lands vesting in the State Government in accordance with the following scale:

(i) for the first sum of rupees five thousand or any portion of the net annual income from the land, fifteen times such sum or portion;

(ii) for the next sum of rupees five thousand or any portion thereof of the net annual income from the land, twelve times such sum or portion;

(iii) for the balance of the net annual income from the land, ten times such balance:

Provided that

(i) if the tenant in respect of the land is a permanent tenant, the amount payable will be six-times the difference between the rent and the land revenue payable for such land;

(ii) if the tenant holds land from intermediaries the amount will be paid to the land-owner and the intermediaries in the same proportion in which the rent paid for the land by the tenant was being appropriated by them immediately before the date of vesting;

(iii) if the land vesting in the State Government is D class land referred to in Part A of Schedule I or if the landlord is:

1) a small holder;

2) a minor;

3) a widow;

4) a woman who has never been married;

5) a person who is subject to such physical or mental disability; or

6) such soldier or seamen whose lands vest in the State Government

an amount equal to twenty times the net annual income from such land will be payable.

The net annual income from the land should be deemed to be the amount payable as annual rent in respect of the land.

But where in a land assessed as wet land or dry land the landlord has raised fruit bearing trees, the annual income in that case should be subject to the rules determined on the basis of assessment for garden land which could have been levied having regard to the nature of the fruit bearing trees.

Where there are wells or other structures of a permanent nature on the land constructed by the landlord the value calculated in that regard will also be payable.

The aggregate amount payable as said above should not exceed rupees two lakhs.

Tribunal

Constitution of Tribunal

The State Government is empowered under Sec.48 to constitute for each Taluk a Tribunal for purposes of this Act consisting of the following members:

(i) the Assistant Commissioner of the Revenue sub-division having jurisdiction over the Taluk or a specially appointed Assistant Commissioner

(ii) four others nominated by the State Government of whom at least one should be a person belonging to the Scheduled Castes or Scheduled Tribes.

The State Government is at liberty to constitute additional Tribunals for any Taluk and the Deputy Commissioner may distribute the work among the Tribunals in any Taluk.

The Assistant Commissioner will be the Chairman of the Tribunal.

The State Govt. can re-constitute the Tribunal and any proceedings pending before the Tribunal will be continued by the reconstituted Tribunal.

All acts or proceedings of the Tribunal are deemed to be valid by reason despite the existence of any vacancy among its members or any defect in the constitution or re-constitution.

The non-official members of the Tribunal should be entitled to such travelling and other allowances as may be prescribed.

The Tahsildar or any officer specially appointed for the purpose will be the Secretary of the Tribunal.

Procedure of enquiry by the Tribunal

Any person who wants to be registered as an occupant should make an application to the Tribunal within a period of six months from the date of commencement of Sec.1 of the Karnataka Land Reforms (amendment) Act, 1978

On receipt of such an application, the Tribunal should publish a public notice in the village in which the land is situated calling upon the landlord and all other persons having an interest in the land to appear before it.

In case if an objection is filed disputing the validity of the applicant's claim the Tribunal will conduct an enquiry and determine the person entitled to be registered as occupant.

If there is no objection in respect of any part of the claim, the Tribunal will pass orders granting the application accordingly.

The order of the Tribunal will be final it should send a copy of every such passed order to the Tahsildar and the parties concerned.

Tribunal also has the power to correct any clerical or arithmetical mistakes in any of its orders.

After causing actual measurement the Tribunal has the power to correct the extent of land in its orders. This should be done only after giving an opportunity of being heard to the concerned parties.

Tahsildar to determine the amount payable

The Tahsildar after receiving the orders passed under and where no application is filed within the said period on receipt of the application by the landlord, proceed to determine the amount payable and prepare a statement showing the apportionment of the amount so determined among the persons entitled to it in accordance with the value of their respective interest in the land.

Such statement should contain the following particulars, namely:—

(a) the **particulars of the lands** in respect of which the amount is to be paid;

(b) the **names** of the land-owner, landlord and intermediaries, if any, and other persons interested in the land and

(c) the **amount payable** to each of them;

In case if there is no agreement among the persons entitled for the amount regarding the right

to or apportionment of the amount, the Tahsildar should refer the question to the Court.

On receipt of such reference the Court should try the question referred to it after giving notice to the parties concerned and record findings thereon and send the same back to Tahsildar.

The Tahsildar should then prepare the statement in accordance with the said findings.

Interim Orders

The Tribunal is empowered under Sec.48C to issue interlocutory orders in the nature of temporary injunction or appointment of Receiver concerning the dwelling house or land in respect of which an application is made.

The Tribunal has the power to revoke or modify the order issued by it at any time and the order of the Tribunal will be final.

Case law

Under Sec.48-C the Tribunal has no jurisdiction to issue an order of temporary injunction or appoint a receiver concerning a land in respect of which there is no application made under Sec.48-A of the Act – ***Lingayya Shetty Vs. Coondapur Taluk Land Tribunal, ILR 1977(2) Kar.L.J 161***

The Sub-Inspector of Police does not possess any power under the Land Reforms Act to issue any order so as to interfere with the civil rights of parties and entrench upon the jurisdiction of Land Tribunal – ***Totawwa Vs. Revanappa, 1980(1) Kar.L.J. Sh. N.49***

Sub-tenants of tenants to be registered as occupants

If a tenant has lawfully sub-let the land held by him, such sub-tenant of the land, should be entitled to be registered as occupant of the land of which he was a sub-tenant before the date of vesting to the exclusion of the tenant.

Determination of encumbrances and payment of the amount

The Tahsildar while determining the said amount should also determine any mortgage or other encumbrance lawfully subsisting on the land on the date of vesting, and the amount due under the mortgage or the encumbrance in respect of such land should be a charge on the amount payable in respect of such land to the person who has created the mortgage or encumbrance.

If the total amount payable in respect of encumbrances is less than the amount payable in

respect of such land it should be deducted from such amount and the balance paid to the land-owner, landlord the intermediaries, if any, and other persons interested towards the amount.

If the total amount payable in respect of the encumbrances is more than the amount payable in respect of the land, the amount payable will be distributed among the holders of encumbrances in the order of priority. If any person has a right to receive maintenance or alimony from the profits of the land, deductions should also be made for such payment out of the amount payable.

If any question of law is involved regarding the validity of the encumbrance, the claim of the holder of the encumbrance or regarding the amount due in respect of the encumbrance or if there is no agreement regarding any encumbrance between the landlord and the holder of the encumbrance, then the Tahsildar should refer the question for decision to the Court. On receipt of such reference the Court should try the question referred to it after giving notice to the parties concerned and record findings and send the same back to the Tahsildar.

Any advance paid by the tenant to the landlord for the lease or purchase of the land held by him on lease from the landlord should be deemed to be a charge on the land, and the debt should be discharged in the same manner as an encumbrance on such land.

Mode of payment

The amount payable to any person should

(a) be paid in cash in a lumpsum if the amount payable does not exceed two thousand rupees; and

(b) if the amount payable exceeds two thousand rupees the amount up to two thousand rupees should be paid in cash and the balance be paid in non-transferable and non-negotiable bonds carrying interest at the rate of five and a half per cent per annum and of guaranteed face value maturing within a specified period not exceeding twenty years.

The amount payable under the bonds under this clause may be paid in instalments not exceeding twenty.

Further the amount payable should be paid;

(i) in the case of a minor, a person who has attained the age of sixty five years a woman who has never been married, a small holder, a person subject to the prescribed physical or mental disability, a widow,—

(a) in a lumpsum where the amount payable does not exceed fifty thousand rupees,; and

(b) where the amount payable exceeds fifty thousand rupees, the first fifty thousand rupees in a lumpsum and the balance in non-transferable and non-negotiable bonds carrying interest at the rate of five and half per cent per annum and of guaranteed face value maturing within a specified period not exceeding twenty years;

(ii) in the case of a widow, if she so elects in writing, in the form of annuity during her life time.

Payment of premium by tenant

The amount of premium in respect of the land of which a tenant or sub-tenant entitled to be registered as occupant should be payable to the State Government by the tenant or sub-tenant:

(i) where the amount payable does not exceed two thousand rupees, in a lumpsum;

(ii) in other cases,

(a) either in lumpsum; or

(b) where the amount is paid by him out of his own funds, in annual instalments not exceeding twenty with interest at five and half per cent per annum, from the date of the order and where the money is advanced by the State Land Development Bank or a credit agency, in annual instalments of such number not exceeding the number permitted as maximum for the recovery of term loan granted by such bank or agency without interest there on.

In addition to the premium payable, the tenant will also be liable to pay the land revenue due on that land.

Case law

A mere perusal of Sec.53(1)(ii)(b) would make it clear that the question of payment of interest will arise only when a request is made by the person concerned to pay the amount in instalments. Therefore in the absence of there being material to show that, in the instant case, any such request was made by the tenant seeking to pay the amount in instalments, the Authority concerned could not have imposed the interest – ***Parashuramappa Tulajappa Daddiyavar Vs. St. of Karnataka & Ors., 2006(6) Kar.L.J. 334***

Establishment of a separate fund

Sec.53A provides for the constitution of a fund called the Karnataka Religious and Charitable Institutions Annuity Fund.

This fund should consist of

(a) the amount of premium collected from the tenants or sub-tenants of land belonging to the institutions referred to in section 106;

(b) the interest earned on the amounts in the said fund;

(c) such amount transferred from the consolidated fund of the State as may be necessary to make up the deficit, if any, where the amounts referred to in the above clauses are insufficient to pay the annuities to such institutions.

(3) The amount specified above should first be credited to the Consolidated Fund of the State.

Premium recoverable as arrears of land revenue

If a tenant or sub-tenant fails to make payment of any instalment in accordance with the provisions of the foregoing sections the amount of such instalment should also be recoverable as an arrear of land revenue.

The amount so recovered should be deposited with the Tahsildar.

Issue of certificate of registration

On receipt of the final orders passed the Tahsildar should issue a certificate that the tenant has been registered as an occupant. The certificate should be conclusive evidence of such registration.

The Tahsildar should forward a copy of the certificate issued as above to the concerned Sub-Registrar who should register the same.

Provisions applicable to minors, persons under disability, etc

If the tenant is a minor or a person subject to any mental or physical disability or a soldier in service in the Armed Forces of the Union or a seaman, the right of the tenant under section 45 may be exercised,

(i) by the minor within one year from the date on which he attains majority;

(ii) by a person subject to physical or mental disability within one year from the date on which such disability ceases to exist;

(iii) by a soldier within one year from the date on which he is released from the Armed Forces or is sent to the Reserve;

(iv) by a seaman, within one year from the date on which he ceases to be a seaman.

Vesting in the State Government of land leased contrary to the Act

If it appears to the Tahsildar that any person has leased land contrary to the provisions of this Act, he is empowered to issue a notice to such person to show cause within fifteen days from the date of service of the notice why the land leased should not be forfeited to the State Government as penalty for contravention of the Act.

After considering the reply or other cause shown if the Tahsildar is satisfied that there has been such a prohibited lease he is empowered to make an order declaring the right, title and interest of such person in the land stands be forfeited to the State Government as penalty.

Subsequently such forfeited land will vest in the State Government and the Tahsildar may take its possession by summarily evicting any person occupying it and no amount will be payable in respect of such land and such land should be disposed of in accordance with the provisions of section 77.

Failure to cultivate personally

If at any time after the tenant has been registered as occupant under any of the foregoing provisions, such tenant fails to cultivate the land personally for three consecutive years, he should be evicted and the land should be disposed of in accordance with the provisions of section 77. However the Tahsildar has the power to condone such failure for sufficient reasons.

Restriction on transfer of land of which tenant has become occupant

Any land of which the occupancy has been granted to any person under this hereunder should not be transferred by sale, gift, exchange, mortgage, lease or assignment within fifteen years but the land may be partitioned among members of the holder's joint family.

However the registered occupant can take loan on such land for development of land or improvement of agricultural practices and in the event of his making default in payment of such loan in accordance with the terms and conditions on which such loan was granted, it will

be lawful to cause his interest in the land to be attached and sold and the proceeds to be utilised in the payment of such loan

Any transfer or partition of land in contravention of the prohibition will be invalid and such land will vest in the State Government free from all encumbrances and can be disposed of as prescribed under Sec.77.

Surrender of land to State Government

If the person who has been registered as occupant or his successor-in-title intends, **within six years from the date of such registration**, giving up personal cultivation of the land, he should surrender the land to the State Government, and on such surrender the State Government should pay an amount equal to the premium paid and the depreciated value of improvements, if any, effected after the date of registration, to the person surrendering and the other persons interested in the land.

Subsequently the surrendered land then should be at the disposal of the State Government and the Tribunal may thereafter dispose of it as surplus land vesting in the State Government.

Synopsis of Topic

- *What is ceiling on land holdings?*
- *Why ceiling on land holdings?*
- *Ceiling on land*
- *Future acquisition of land*
- *Filing of declaration of holding*
- *Penalty for failure to furnish declaration*
- *Payment for use and occupation of land*
- *Vesting of land surrendered by owner*
- *Vesting of land surrendered by limited owner*
- *Reversion and vesting of land surrendered by usufructuary mortgagee*
- *Vesting of land surrendered by tenant*
- *Prohibition of alienation of holding*
- *Excess land not to be surrendered in certain cases*
- *Taking possession of land vested in State Government*
- *Disposal of surplus land*
- *Purchase price of surplus land*
- *Management of surplus lands*

Ceiling on Land Holdings

Secs.63 to 79 deal with the ceiling on land holdings a person or a family can have.

What is ceiling on land holdings?

i. It means fixing maximum size of land holding that an individual/family can own.

ii. Land over and above the ceiling limit, called surplus land.

iii. If the individual/family owns more land than the ceiling limit, the surplus land is taken away (with or without paying compensation to original owner)

iv. This surplus land is

a) distributed among small farmers, tenants, landless labourers or

b) handed over to village panchayat or

c) Given to cooperative farming societies.

Why ceiling on land holdings?

i. Art.38 seeks to minimize the inequalities of income, status, facilities and opportunities. Land ceiling minimize inequality in the land ownership and thus reduces inequality of income.

ii. Art.39(a) wants to give right to adequate means of livelihood for all citizens. Land ceiling (and subsequent land redistribution) provides self-employment opportunities to landless agricultural labourers.

iii. Art.39(b) envisages that the ownership and control of the material resources of the community are so distributed as best to sub-serve the common good

iv. Art.39(c) aims to ensure that the operation of economic system does not result in the concentration of wealth. Hence land ceiling is necessary to prevent concentration of wealth in the hands of few.

v. If there is no land ceiling, rich farmers will buy all the land of entire village and Tehsil. Absentee landlordism will star and they will lease the lands to small farmers (tenants).

Such small farmer (tenant) doesn't have any motivation to work hard because he doesn't own the land and he has to give a major portion of the produce to the rich farmer, as rent.

vi. After abolishing Zamindari wherever State Governments had not implemented Land ceiling then rich farmers/superior tenants become the new de-facto/virtual Zamindars of Modern India.

Ceiling on land (Sec.63)

Sec. 63 expressly prohibits any person who is not a member of a family or who has no family and any family from holding land in excess of the ceiling area either in the capacity of land owner, landlord or tenant or mortgagee with possession.

The ceiling area for a person who is not a member of a family or who has no family or for a family will be **ten units**.

In the case of a family consisting of more than five members the ceiling area will be **ten units plus an additional extent of two units** for every member in excess of five, so however that the ceiling area should not exceed twenty units in the aggregate.

The ceiling area for a person who is tenant is forty units.

In calculating the extent of land held by a person who is not a member of a family but is a member of a joint family and also in calculating, the extent of land held by a member of a family who is also a member of a joint family, the share of such member in the lands held by a joint family should be taken into account and aggregated with the lands, if any, held by him separately and for this purpose such share will be deemed to be the extent of land which would be allotted to such person had there been a partition of the lands held by the joint family.

In respect of lands owned or held under a private trust:

(a) where the trust is revocable by the author of the trust, such lands should be deemed to be held by such author or his successor in interest; and

(b) in other cases, such lands should be deemed to be held by the beneficiaries of the trust in proportion to their respective interests in such trust or the income derived therefrom.

In calculating the extent of land held by a person who is not a member of a family or who has no family or by a member of a family, the share of such person or member in the lands held by a co-operative farm should be taken into account.

This Section also prohibits educational, religious or charitable institution or society or trust, of a public nature formed for an educational, religious or charitable purpose from holding land. However an exception to this rule is if the income from the land is appropriated solely for the institution or the society or the trust concerned. In such a case such body can hold upto twenty units.

If there arises a question whether the income from land is solely appropriated for such body the decision of the prescribed authority will be final. If it is found that the income is not so appropriated, the land held by such a body will be deemed to be surplus land and liable to

vest in the State Govt.

Case law

It may be that Sec.63 read with the definition of the expression 'family' contravenes Articles 14, 19 and 31 of the Constitution. But since the Act in particular Sec.63 which is mainly intended to bring about agrarian reforms has the protection of Article 31A of the Constitution and attack based on Articles 14, 19 and 31 should fall – **Bhasker Vs. State AIR 1975 Kar. 55**

The Civil Court has no power to decide the question whether the sale of the land in favour of Defendant is hit by the provisions of Sec.63 and 64 of the Act. It is only the prescribed Authority that can decide that question under Sec.83 – **Ranga Rao Vs. Raghavendracharya ILR 1973 Mys 211**

Future acquisition of land

Consequent upon transfer, gift, purchase, exchange, mortgage with possession, lease, surrender or any other kind of transfer *inter vivos* or by bequest or inheritance, partition or otherwise if any person or family acquires any land and for this reason if such person or family holds land in excess of the ceiling such surplus land will vest with the State Govt.

Here "bequest" includes:

(i) a gift made in contemplation of death; and

(ii) a gift to take effect after the happening of any event.

Filing of declaration of holding

Every person who holds

(i) **ten acres or more of lands** having facilities for irrigation from a source of water belonging to the State Government; or

(ii) **twenty acres or more of lands** on which paddy crop can be grown with the help of rain water; or

(iii) **forty acres or more of lands** classified as dry but not having any irrigation facilities from a source of water belonging to the State Government,

and every person whose land is deemed to be in excess of the ceiling area should furnish a declaration to the jurisdictional Tahsildar containing the following particulars namely:

(i) particulars of all the lands;

(ii) particulars of the members of the family; and

(iii)such other particulars as may be prescribed.

The Tahsildar has the power to issue notice requiring any person who holds land, or resides within his jurisdiction, to furnish a declaration of all lands held by him within a specified period which will not be less than thirty days from the date of service of the notice and it will be the duty of such person to furnish the declaration and comply with the notice.

Penalty for failure to furnish declaration

Where a person required to furnish a declaration fails without reasonable cause so to do or furnishes a false declaration the Tahsildar is empowered to issue a notice to such person asking him to show cause within fifteen days why a penalty may not be imposed on him.

If the person gives no reply or where an unsatisfactory reply is filed the Tahsildar has the power to impose the said penalty and require such person to furnish a true and correct statement complete in all particulars, within a period of one month from the date of service of the order.

If such person fails to comply with the order within the time granted, the right, title and interest of such person in the land held to the extent in excess of the ceiling area should be forfeited to the State Government, by way of penalty, and will vest in the State Government.

Payment for use and occupation of land

Every person possessing land in excess of the ceiling area should pay the State Government compensation as determined by the Tribunal and such sum payable may be recovered as arrears of land revenue.

Vesting of land surrendered by owner

In case if the land surrendered is by an owner the State Government is empowered to take over such land on the service of the order and such land will vest in the State Government free from all encumbrances.

Vesting of land surrendered by limited owner

In case if the land surrendered is by a limited owner it will vest in the presumptive reversioner.

Where as a result of the such vesting of any land the total land held by the reversioner exceeds the ceiling limit such reversioner should furnish a declaration of his holding within a period of ninety days of such vesting to the jurisdictional Tahsildar.

Such reversioner should also be liable to pay the limited owner an annual sum equivalent to four and a half per cent of the amount payable to the owner in respect of the land vesting in him until such time as the limited owner would have continued in possession of the land but for the surrender of the land by him.

Reversion and vesting of land surrendered by usufructuary mortgagee

If a land has been surrendered by an usufructuary mortgagee, the possession of the land will revert back to the mortgagor. But such mortgagor should not be a person disentitled to hold lands under section 79A.

Once when the usufructuary mortgagee surrenders the land to the mortgagor the latter is liable to pay the mortgage money to the former. Such land can be kept as security for such payment by the usufructuary mortgagee.

In cases where possession of the land surrendered by an usufructuary mortgagee does not revert to the mortgagor the State Government may take over such land on the publication of the notification and such land will vest in the State Government free from all encumbrances.

Vesting of land surrendered by tenant

Where the land surrendered by a tenant of a soldier or a seaman the possession of the land should revert to the owner.

The owner to whom possession of the land reverts as above is liable to pay compensation to the tenant which should be equal to one year's net income of such land.

In cases where possession of the land surrendered by a tenant does not revert to the owner, the State Government is empowered to take over the land on the publication of the notification and such land will vest in Government free from all encumbrances.

Prohibition of alienation of holding

Any person owning land in excess of the ceiling limit should not alienate his holding or any part of it by way of sale, gift, exchange or otherwise until he has furnished a declaration and the extent of land to be surrendered in respect of that holding has been determined and an order has been passed. Any alienation made in contravention of this will be null and void.

Excess land not to be surrendered in certain cases

Any person or a family holds land not exceeding the ceiling limit but subsequently the land held exceeds the ceiling limit, due to any change in the classification of the land consequent upon any improvements effected in the land by such person or family or due to a decrease in the number of members of the family, then such person will not be required to surrender any part of the land on the ground that it is excess land.

Taking possession of land vested in State Government

If any land vests in the State Government, the Tahsildar may, after removing any obstruction that may be offered, forthwith take possession of the land.

Disposal of surplus land

Subject to reservation of seventy-five per cent thereof for grant to persons belonging to SC & ST all the surplus land vesting in the Govt. under this Act should be granted by the Deputy Commissioner or any other officer authorised by the State Government in this behalf to the following persons:

(i) Dispossessed tenants who are not registered as occupants;

(ii) Displaced tenants having no land;

(iii) Landless agricultural labourers;

(iv) Landless persons or other persons residing in villages in the same Panchayat area whose gross annual income does not exceed rupees twenty thousand and ex-military personnel whose gross annual income does not exceed rupees twenty-two thousand;

(v) Released bonded labourers;

"Dispossessed tenant" means a person who not being member of the family of the owner was cultivating lands personally and was dispossessed between 10th September 1957 and 24th January 1971 and who is not registered as an occupant under the provisions of this Act.

"Displaced tenant" means a person who has been deprived of agricultural land on which he was a tenant, on account of

(i) acquisition of such land under the Land Acquisition Act; or

(ii) resumption of such land by a soldier or a seaman for personal cultivation.

The lands reserved for persons belonging to the Scheduled Castes and Scheduled Tribes should be granted in accordance with such rules as may be prescribed.

Land granted as mentioned above is prohibited from being transferred by the grantee or his legal representatives for **a period of fifteen years** from the date of the grant except by way of mortgage in favour of a financial institution.

The Deputy Commissioner or the authorised officer should forward a copy of the order granting land as mentioned above to the concerned Sub-Registrar who will register the same.

Purchase price of surplus land

On the grant of land the grantee will have the option to deposit with the Tribunal the purchase price of the land granted as discussed earlier either in a lumpsum or in such annual instalments not exceeding twenty as the Tahsildar may determine.

Where the purchase price is payable in instalments, the amount outstanding after payment of each installment should bear interest at the rate of five and a half per cent per annum if the purchase price is paid by the grantee out of his own funds and no interest where the money for payment of the purchase price is advanced by the State Land Development Bank or a credit agency.

All amounts due from the grantees should be a first charge on the land granted and be recoverable as land revenue due on that land.

Management of surplus lands

The Tahsildar has the power to manage the surplus lands until they are disposed of by making arrangements for the cultivation and protection by lease or otherwise.

Synopsis of Topic

- *Acquisition of land by certain persons prohibited*
- *Procedure after acquisition*
- *Prohibition of holding agricultural land by certain persons*
- *Penalty for failure to furnish declaration*
- *Transfers to non-agriculturists barred*
- *Declaration to be made before the registering authority in certain cases*
- *Reporting of illegal transactions*
- *Inquiry regarding illegal transactions*

Restrictions on Holding or Transfer of Agricultural Lands

Secs.79A to 83 of Karnataka Land Reforms Act, 1961 deal with the restrictions which have been put on the holding or transfer of agricultural lands. These provisions are in place for the sake of protecting the agricultural land and the owners of such lands.

Acquisition of land by certain persons prohibited

Sec.79A expressly prohibits any person who or a family or a joint family which has an assured annual income of not less than rupees **twenty five lakhs** from sources other than agricultural lands is not entitled to acquire any land whether as land owner, landlord, tenant or mortgagee with possession.

For this purpose

(i) the aggregate income of all the members of a family from non-agricultural sources should be deemed to be income of the family or

(ii) a person or a family or a joint family should be deemed to have an assured annual income of not less than rupees twenty five lakhs from sources other than agricultural land on any day if such person or family or joint family had an average annual income of not less than rupees twenty five lakhs from such sources during a period of five consecutive years preceding such day.

In case if a person or a family or a joint family which has been assessed to income tax under

on an yearly total income of not less than **rupees twenty five lakhs for five consecutive years** will also be deemed to have an average annual income of not less than rupees twenty five lakhs from sources other than agricultural lands.

Procedure after acquisition

Despite the said restriction if anybody acquires land by bequest or inheritance he should give the jurisdictional Tahsildar within ninety days from the date of acquisition, a declaration containing the following particulars, namely

(i) particulars of all lands

(ii) the average annual income of himself or the family

(iii)such other particulars as may be prescribed.

The Tahsildar after receiving such declaration should conduct an enquiry and send a statement containing the particulars relating to such land to the Deputy Commissioner. Subsequently the Deputy Commissioner will declare that such land stands transferred to the State Government free from all encumbrances.

Prohibition of holding agricultural land by certain persons

Sec.79B prohibits any other person other than a person cultivating land personally to hold land. It also prohibits an educational, religious or charitable institution or society or trust, other than an institution or society or trust referred to in subsection (7) of section 63, capable of holding property, a company, an association or other body of individuals not being a joint family or a co-operative society other than a co-operative farm, to hold any land.

Despite this restriction if any of the aforementioned body holds lands then it should furnish the jurisdictional Tahsildar a declaration containing the particulars of such land within ninety days from the date of commencement of Amendment Act.

The Tahsildar after receiving such declaration should conduct an enquiry and send a statement containing the particulars relating to such land to the Deputy Commissioner. Subsequently the Deputy Commissioner will declare that such land will vest in the State Government free from all encumbrances and take its possession

Penalty for failure to furnish declaration

Where a person fails to furnish the declaration as mentioned above or furnishes a false declaration, the Tahsildar will issue a notice to such person to show cause within fifteen days

as to why the penalty specified in the notice, which may extend to five hundred rupees, may not be imposed upon him.

On considering the reply filed to such notice if he is satisfied that the person had failed to furnish the declaration without reasonable cause or had filed it, knowing or having reason to believe it to be false, the Tahsildar may impose penalty and also require such person to furnish a true and correct declaration within a period of one month from the date of the order.

If the person against whom such an order has been passed fails to comply with the said order, his right, title and interest in the land in question will be forfeited to and vest in the State Government as penalty.

Transfers to non-agriculturists barred

A sale including sales in execution of a decree of a civil court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue, gift or exchange or lease of any land or interest, or a mortgage of any land is not lawful in favour of a person:

i. who is not an agriculturist, or

ii. who being an agriculturist holds as owner or tenant any land which exceeds the limits Secs. 63 or 64

iii. who is not an agricultural labourer; or

iv. who is disentitled under section 79A or section 79B to acquire or hold any land.

However the jurisdictional Deputy Commissioner or any officer not below the rank of the Deputy Commissioner has the power to grant permission for the said transactions to the prohibited person who **bona fide intends to take up agriculture to acquire land** on the following conditions, namely:

(i) that the transferee takes up agriculture within one year from the date of acquisition of land, and

(ii) that if the transferee gives up agriculture within five years, the land will vest in the State Government

Sections 79A, 79B, and 80 do not apply to

(a) the sale, gift or mortgage of any land or interest therein in favour of

1) the Government

2) the Karnataka State Road Transport Corporation

3) the Karnataka Power Transmission Corporation Limited

4) the Karnataka Housing Board

5) the Industrial Areas Development Board

6) the Karnataka Slum Clearance Board

7) the Bangalore Development Authority

8) a Nagarabhivruddhi Pradhikara

(b) the mortgage of any land or interest therein in favour of

i. a co-operative society

ii. a financial institution

iii. any company as defined

iv. any corporation,

v. the Coffee Board

as security for any loan or other facility given by such society, bank, company, corporation or Board for agricultural purposes.

Case law

The executing Court, before confirming a sale is not competent to examine its validity of a sale with reference to Secs.79-A and 80 of the Act, since the sale is not completed before it is confirmed. It is only a completed sale which could be challenged as being in contravention of the provisions of the Land Reforms Act and not a sale which has not yet been confirmed – ***Kanvihalli Chinnappa Vs. Tigari Shivappa AIR 1977 Kant. 162***

Declaration to be made before the registering authority in certain cases

Before the registration of any land by way of sale, gift, exchange, lease, mortgage etc should be carried out the transferee of the land should file a declaration regarding the total extent of land held by him and also his assured annual income before the registering Authority.

Subsequently the registering authority will forward one copy of such declaration to the concerned jurisdictional officer within the prescribed time.

On receipt of the copy of the declaration under sub-section (2), the prescribed officer may

obtain such information as may be necessary and take such action as he deems fit in accordance with the provisions of this Act, and in accordance with such rules as may be made in this behalf.

Reporting of illegal transactions

If any land related transaction has taken place in contravention of any provision of the Karnataka Land Reforms Act, 1961 comes to the notice of the village officer or officers of revenue, registration and land records Departments such officer is duty bound to report the same to the prescribed Authority.

Inquiry regarding illegal transactions

Such authority should conduct a summary inquiry and determine whether the transaction reported to it is in contravention of any provisions of this Act and make a declaration accordingly.

If any transaction is declared to be in contravention of any of the provisions of this Act the same will become null and void. The land in respect of which such transaction has taken place as penalty will be forfeited to the State Government free from all encumbrances.

Case law

The Assistant Commissioner has held that the land has been purchased by the father of the Petitioner in violation of the provisions of Sec.79-A, 79B and 80 of the Karnataka Land Reforms Act, 1961 and ordered to confiscate the property by declaring the sale deed as void. No opportunity was given to the Petitioner or his father who owned 64 cents of land at Gudalur Taluk of Nilgiris District, Tamil Nadu and certificate has been issued by the Tahsildar, Gudalur in this regard. On perusal of Annexure-B produced by the Petitioner it shows that the father of the Petitioner was an agriculturist, purchasing of the land would not be in violation of the provisions noted above. Hence the Petition was allowed – ***Jacob Thomas Vs. the Assistant Commissioner, Bengaluru North Sub-Division, Bengaluru and Anr., 2010(3) Kar.L.J 350***

Synopsis of Topic

- *Overview*
- *Formation of a Co-operative Farm*
- *Application for registration*
- *Registration of Co-operative Farm*
- *Members' land transferred to the farm*
- *Consequences of registration*
- *Bye-laws of the Farm*
- *Amendment of the bye-laws by the Registrar*
- *Contribution by a member*
- *Liability of the Farm to land revenue and other dues*
- *Admission of new members*
- *Heirs deemed to be members of the Farm*
- *Concessions and facilities for the Co-operative Farm*

Cooperative Farms

Overview

Secs.89 to 102 of the Karnataka Land Reforms Act, 1961 deal with several aspects of cooperative farms like formation, registration, membership, bye-laws, management etc.

Sec. 89 of the Act provides for the formation of cooperative farms

Formation of a Co-operative Farm

Any ten or more persons of a village or two or more contiguous villages holding between them as land-owners or tenants, rights in and possession over fifty acres can start a Co-operative Farm comprising the land so held and possessed by them.

Application for registration

For the registration of a cooperative farm an application should be made along with extracts

from the record of rights or other records showing the total area with the survey numbers of all the fields held by each of the applicants in the village or contiguous villages

Registration of Co-operative Farm

The Registrar has to grant a certificate of registration and issue a copy of the certificate which should be forwarded to the Deputy Commissioner for the required action.

Members' land transferred to the farm

After a co-operative farm has been registered the possession of all lands in the village or contiguous villages held by a member, in respect of which the Co-operative Farm is registered stand transferred to the co-operative farm which will continue to hold it for agricultural purposes.

If any person withdraws from the membership of such co-operative farm his land should be transferred to him by the co-operative farm.

Consequences of registration

When a co-operative farm has been registered the provisions of Karnataka co-operative societies Act, 1959 will be applied as far as they are not inconsistent with this Act.

Bye-laws of the Farm

Applications which are made for the registration of the co-operative farm should accompany a copy of the proposed bye-laws of the co-operative farm.

Amendment of the bye-laws by the Registrar

The registrar has the power to heard amend the bye-laws either on his own motion or on an application made by the majority of the members of the co-operative farm

Contribution by a member

Every member is be bound to contribute the following to the Co-operative Farm

(i) funds,

(ii) personal labour,

(iii) agricultural implements, agricultural stock, and such other articles as may be prescribed.

Liability of the Farm to land revenue and other dues

A co-operative farm is liable for the payment of all the land revenue, cesses, water rate, betterment contribution and local rates, payable by the land-owner in respect of the land

Admission of new members

Sec.100 provides for the admission of a new member who is a resident of the village or contiguous villages in which a Co-operative Farm is situated.

Heirs deemed to be members of the Farm

In case if a member of a Co-operative Farm dies, his heirs will be deemed to have become members of the Co-operative Farm.

Concessions and facilities for the Co-operative Farm

A Co-operative Farm is entitled to following concessions and facilities:

(a) reduction of land revenue;

(b) reduction of or exemption from agricultural income tax;

(c) free technical advice from experts employed by the Government;

(d) financial aid and grant of subsidies and loans with or without interest;

priority in irrigation from State irrigation works.

Synopsis of Topic

- *Introduction*
- THE NEED FOR LAND REFORMS
- LAND REFORM MEASURES

  Abolition of Intermediaries

  Tenancy Reforms

  Ceiling on Land Holdings

  Bhoodan and Gramdan

  Protection of Tribal Land

  Consolidation of Holdings
- CHOICE OF APPROPRIATE FORM OF FARM ORGANISATION
- CHANGES IN AGRARIAN STRUCTURE
- PATTERN OF LANDHOLDINGS

  Pattern of Ownership Holdings

  Pattern of Operational Holdings
- CONCLUSION
- KEY WORDS

Land Reforms in India During 1947-70

Introduction

The main characteristics of the agrarian structure which independent India inherited were

a) absentee land ownership;

b) exploitation of tenants through high rents and insecurity of tenure;

c) unequal distribution of land;

d) tiny and fragmented holdings; and

e) lack of adequate institutional finance to agriculture.

On this agrarian structure was imposed a situation in which bulk of the cultivators were short of fixed as well as working capital. This resulted in low investments and thereby low yields in agriculture.

Agrarian structure, as you know, is a broad concept comprising land tenure system as well as credit, marketing, etc. Thus agrarian reforms would imply corrective measures in land tenure system, credit and marketing. On the other hand the concept of 'land reforms' is somewhat narrower than the above and relates to the corrective measures in prevalent land tenure system.

THE NEED FOR LAND REFORMS

As we noticed above, land ownership was highly unequal at the time of Independence. There was a parasitic class of intermediaries who played no role in production. On the other hand, the vast majority of actual cultivators were either tenants or subtenants, without any security of tenure. According to the National Commission on Agriculture (1976), this was the root cause of the state of chronic crisis in which Indian agricultural economy was enmeshed before the achievement of Independence.

Before Independence, there were three major systems of land tenure, namely

1. Zamindari System,
2. Mahalwari System and
3. Ryotwari System.

The Zamindari system was introduced by Lord Cornwallis in 1793 through permanent settlement that fixed the land rights of zamindars in perpetuity without any provision for fixed rents or occupancy rights for actual cultivators. Under the permanent settlement, zamindars were found to be more interested in higher rent than in agricultural improvement. During the early nineteenth century, efforts were made to undo the adverse effects of permanent settlement and to provide for temporary settlement as a matter of policy. Regulation VII of 1822 Act provided for temporary settlement with provision for periodic settlement in parts of the United Provinces. In the provinces of Madras and Bombay, Ryotwari system was prevalent. Each ryot was recognised by law as the proprietor with the right to transfer or mortgage or sub-let his land. Moreover, in parts of United Provinces and

Punjab, Regulation VII of 1822 Act and Regulation IX of 1833 Act provided for Mahalwari Settlement with the entire village community. This required each peasant of the village to contribute to total revenue demand of the village on the basis of the size of holding. In 1885, the Bengal Tenancy Act was passed with a view to conferring occupancy rights upon ryots who were in continuous possession of land for 12 years. The tenant could not be evicted by the landlord, except by a decree of court. Similarly, the Bihar Tenancy Act of 1885 and Orissa Tenancy Act of 1914 granted occupancy rights to tenants. Besides, the Madras Tenancy Act of 1908 provided for protection of ryots from eviction as long as they paid the rents. Nevertheless, since majority of actual cultivators were unrecorded tenants-at-will, these legal measures could not bring much relief to the tiller of the soil.

Although the adverse effect of landlordism on agricultural production was most profound in the states of Uttar Pradesh, Bihar, West Bengal and Orissa, other states that were under Ryotwari and Mahalwari Systems also witnessed the growth of a large number of intermediaries with all its adverse impact. The leased-in area constituted nearly 35 per cent of the total operated area in 1950-51. Most of the leases were unwritten and tenants did not have legal security of tenure. The rents varied from 50 per cent to 70 per cent of gross produce. In addition, tenants were often asked to provide free labour to landlords. After Independence therefore, it became necessary to undertake some land reforms measures for removing the feudal character of the agrarian economy and paving the way for rapid agricultural growth with social justice.

Broadly speaking, the objectives of agrarian reforms are as follows:

i) To change the unequal and unproductive agrarian structure;

ii) To remove exploitative agrarian relations, often known as patron-client relationship in agriculture,

iii) To promote agriculture growth with social justice.

LAND REFORM MEASURES

After Independence, the Indian National Congress appointed the Agrarian Reforms Committee under the Chairmanship of J.C.Kumarappa, for making an in-depth study of the agrarian relations prevailing in the country. The committee submitted its report in 1949 which had a considerable impact on the evolution of agrarian reforms policy in the post-independence period. The committee recommended that all intermediaries between the state

and the tiller should be eliminated and the land must belong to the tiller subject to certain conditions.

Let us now examine the various agrarian reform measures undertaken after independence. As mentioned earlier, the term 'land reforms' refers to reforms undertaken in the land tenure system. The steps include

(i) abolition of intermediaries,

(ii) fixation of ceilings on land holdings and

(iii)redistribution of surplus land among landless or semi-landless peasants.

Besides, any special measures adopted to prevent alienation of tribal land and consolidate fragmented holdings come within the broad definition of agrarian reforms.

Abolition of Intermediaries

Following the recommendation of J.C.Kumarappa Committee, all the states in India enacted legislation for the abolition of intermediary tenures in the 1950s, although the nature and effects of such legislation varied from state to state. In West Bengal and Jammu & Kashmir, legislation for abolishing intermediary tenures was accompanied by simultaneous imposition of ceilings on land holdings. In other states, intermediaries were allowed to retain possession of lands under their personal cultivation without limit being set, as the ceiling laws were passed only in the 1960s. As a result, there was enough time left for the intermediaries to make legal or illegal transfers of land. Besides, in some states, the law applied only to tenant interests like sairati mahals etc. and not to agricultural holdings. Therefore, many large intermediaries continued to exist even after formal abolition of zamindari. Nevertheless, it has been estimated that consequent upon the legal abolition of intermediaries between 1950 and 1960, nearly 20 million cultivators in the country were brought into direct contact with the Government.

Tenancy Reforms

The Agrarian Reforms Committee recommended against any system of cultivation by tenants and maintained that leasing of land should be prohibited except in the case of widows, minors and disabled persons. This viewpoint received further strength subsequently in various Five Year Plans. According to the Second Five Year Plan, abolition of intermediary tenures and bringing the tenants into direct relations with the state would give the tiller of the soil his

rightful place in the agrarian system and provide him with full incentives for increasing agricultural production.

Immediately after Independence, although the major emphasis was on the abolition of intermediaries, certain amendments to the existing tenancy laws were made with a view to providing security to the tenants of ex-intermediaries. But these legal measures provoked the landlords to secure mass eviction of tenants, sub-tenants and sharecroppers through various legal and extra-legal devices. The highly defective land records, the prevalence of oral leases, absence of rent receipts, non-recognition in law of sharecroppers as tenants and various punitive provisions of the tenancy laws were utilized by the landlords to secure eviction of all types of tenants. To counteract such a tendency, therefore, it became necessary on the part of the State Governments to enact or amend the laws in the subsequent years and provide for adequate safeguards against illegal eviction and ensure security of tenure for the tenants-at-will.

Broadly speaking, tenancy reforms undertaken by various states followed four distinct patterns:

First, the tenancy laws of several states including Andhra Pradesh (Telangana region), Bihar, Himachal Pradesh, Karnataka, Madhya Pradesh and Uttar Pradesh banned leasing out of agricultural land except by certain disabled categories of landowners, so as to vest the ownership of land with the actual tillers. But concealed tenancy continued to exist in all these states.

Second, the state of Kerala banned agricultural tenancy altogether without having any exception.

Third, States like Punjab, Haryana, Gujarat and Haryana did not ban tenancy as such. But tenants after continuous possession of land for certain specified years, acquired the right of purchase of the land they cultivated. However, in all these states, leasing out by both large and small farmers continued. In fact, a tendency towards reverse tenancy in which large farmers leased-in land from marginal farmers was set in since the advent of green revolution in the mid-sixties.

Fourth, states like West Bengal, Orissa, Tamil Nadu and Andhra area of Andhra Pradesh did not ban leasing-out of agricultural land. But share-croppers were not recognised as tenants. The State of West Bengal recognised share-croppers as tenants only with effect from 1979,

with the launching of ‘Operation Barga’.

Almost all State Governments provided for the regulation of rent, excepting Kerala where leasing out was completely prohibited. The regulated or fair rent ranged from 1/4th to 1/6th of the produce. But actual rent remained always higher than the regulated or fair rent. In many places where small and marginal farmers leased-in land from large or absentee landowners, the situation continued to be exploitative, thereby discouraging the actual tillers to cultivate the land efficiently.

Ceiling on Land Holdings

The term ‘ceiling on land holdings’ refers to the legally stipulated maximum size beyond which no individual farmer or farm household can hold any land. Like all other land reforms measures, the objective of such ceiling is to promote economic growth with social justice. It has been duly recognised by India’s planners and policy makers that beyond a point any large scale farming in Indian situation becomes not only uneconomic, but also unjust. Small farms tend to increase economic efficiency of resource use and improve social equity through employment creation and more equitable income distribution. According to renowned Economist C.H. Hanumantha Rao small farms offer more opportunities for employment compared to large farms. Hence, even if large farms produce relatively more output per unit of area, they cannot be considered more efficient in a situation of widespread unemployment and under-employment prevalent in this country.

Table 3.1

Ceilings on landholdings as imposed during 1960-1970

State	Level of ceiling (hectare)
Andhra Pradesh	10.93 to 131.13
Assam	20.23
Bihar	9.71 to 29.14
Gujarat	4.05 to 53.14
Haryana	12.14 to 24.38
Jammu and Kashmir	9.21
Kerala	6.07 to 15.18
Madhya Pradesh	10.12
Orissa	8.09 to 32.37
Punjab	12.14 to 24.28
Rajasthan	8.90 to 135.97
Tamil Nadu	12.14 to 48.56
Uttar Pradesh	16.19 to 32.37
West Bengal	10.12

In 1959, Indian National Congress (Nagpur Resolution) resolved that agrarian legislation to cover restrictions on the size of land holdings must be implemented in all states by the end of 1959. Accordingly, all the State Governments excepting north-eastern region imposed ceilings on land holdings in the 1960s. The states of West Bengal and Jammu and Kashmir had already imposed ceilings on land holdings along with the laws for abolition of intermediaries in the early 1950s. However, the Nagpur Resolution of 1959 had significant impact as various State Governments immediately took to the ratification of ceiling legislation like:

1. The Gujarat Agricultural Land Ceiling Act, 1960;
2. The Madhya Pradesh Ceiling on Agricultural Holdings Act, 1960;
3. The Orissa Land Reforms Act, 1969,
4. The Uttar Pradesh Imposition of Ceilings on Land Holdings Act, 1960;
5. The Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961;
6. The Karnataka Land Reforms Act1961;

7. The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1960;
8. The Tamil Nadu Land Reforms (Fixation of Ceiling Land) Act, 1961 and
9. The Kerala Land Reforms Act, 1963

These were some of the results of the Nagpur Resolution on Land Reform. However, as the ceiling laws were not ratified simultaneously with abolition of zamindari, except in West Bengal and Jammu and Kashmir as stated earlier, several *nami* and *benami* transfer of land took place. This reduced the potential ceiling surplus land that could be available for redistribution.

Besides, several states including Andhra Pradesh, Assam, Bihar, Haryana, Himachal Pradesh, Jammu and Kashmir, Orissa, Punjab, Uttar Pradesh and West Bengal followed individuals as the unit of application for ceiling, while family as the unit of application was adopted in Gujarat, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Rajasthan and Tamil Nadu. The ceiling limits fixed by various states are shown in Table 3.1.

It may be understood from Table 3.1 that ceilings were quite high in several states. In addition, the following categories of land were exempted from the ceiling laws:

1. Land under Tea, Coffee, Rubber, Coco and Cardamom Plantations
2. Land used for cultivation of Palm, Kesra, Bela, Chameli or rose when such land holders have no land for any other cultivation (U.P.)
3. Sugarcane Farms
4. Co-operative Gardens, Colonies
5. Tank Fisheries
6. Area under orchard up to 4 hectares (Punjab and Haryana)
7. Land held by co-operative farming and other co-operative societies, including land mortgage bank
8. Land held by religious, charitable and educational institutions
9. Land awarded for gallantry
10. Land held by sugarcane factories
11. Land held by state or Central Government

12. Land held by a public sector or industrial or commercial undertaking

13. Land vested in Gram Sabha, Bhoodan or Gramdan Committee

14. Land situated in any area which is specified as being reserved for non-agricultural or industrial development under the relevant tenancy law (Gujarat)

15. Specified farms engaged in cattle breeding, dairying or wool raising

16. Several categories of other land including those held by public sector or commercial undertakings, research farms, etc. or even private forests.

These exemptions as provided in the ceiling laws gave rise to problems of law evasion by manipulating the classification of land. Also the size of the ceiling surplus land available for redistribution was consequently reduced.

Bhoodan and Gramdan

The Bhoodan movement was launched in 1951, immediately after the peasant uprising in Telangana region of Andhra Pradesh, and after some years, another movement known as Gramdan came into being in 1957. The objective was to persuade landowners and leaseholders in each concerned village to renounce their land rights, after which all the lands would become the property of a village association for the egalitarian redistribution and for purpose of joint cultivation. Vinoba Bhave hoped to eliminate private ownership of land through Bhoodan and Gramdan and maintained that the movement would go a long way to ensure the just redistribution of land, the consolidation of holding and their joint cultivation.

However, the movement failed to achieve its targeted objectives and the degree of success in respect of both land acquisition and land distribution was very limited.

Of the total land of about 42.6 lakh acres, received through Bhoodan, more than 17.3 lakh acres were rejected as they were found unfit for cultivation. About 11.9 lakh acres were distributed and 13.4 lakh acres remained to be distributed. In most cases, the village landlords donated only those pieces of land which were either unfit for cultivation or were in dispute with tenants or government. In fact, the landlords preferred to part away with their disputed lands as a compromise formula for there was little hope under the existing law, of being able to keep this land with them. Besides, in return for such land donation, the landlords also received input subsidies and other facilities, which was no less an inducement to part away with the land unfit for cultivation. Furthermore, while it was provided under the Gramdan

movement that private ownership in land is to cease, only the landholders right to sell land was restricted (though not banned), leaving intact the right of inheritance on such lands by the children.

Protection of Tribal Land

All the concerned states ratified laws for prevention of alienation of the tribals from land. In all the scheduled areas, land transfer from tribal to non-tribal population was prohibited by law. But due to various legal loopholes and administrative lapses, alienation of the tribals from their land continued on a large scale. In fact, mortgaging of land to moneylenders due to indebtedness, poverty and acquisition of tribal land for irrigation, dams and other public purposes were largely responsible for alienation of tribal land. Since land is the main source of livelihood for the tribal people and they do not have much upward mobility, indiscriminate acquisition of tribal land for public purposes should be avoided.

Consolidation of Holdings

The term 'Consolidation of holdings' refers to amalgamation and redistribution of the fragmented land with a view to bringing together all plots of land of a cultivator in one compact block. Due to growing pressure of population on land and the limited opportunities for work in the non-agricultural sector, there is an increasing trend towards sub-division and fragmentation of land holdings. This makes the task of irrigation management, land improvement and personal supervision of different plots very difficult.

After independence, almost all states excepting Tamil Nadu, Kerala, Manipur, Nagaland, Tripura and parts of Andhra Pradesh enacted laws for consolidation of holdings. But the nature of legislation and the degree of success achieved varied widely. While in Punjab (including Haryana) it was made compulsory, in other states law provided for consolidation on voluntary basis, if majority of the land owners agreed.

Generally speaking, the consolidation acts provided for (i) prohibition of fragmentation below standard area, (ii) fixation of minimum standard area for regulating transfers, (iii) schemes of Consolidation by exchange of holdings, (iv) reservation of land for common areas, (v) procedure for payment of compensation to persons allotted holdings of less market value in exchange, (vi) administrative machinery for carrying consolidation schemes, and (viii) filing of objections, appeals and penalties.

However, due to lack of adequate political and administrative support, the progress made in

terms of consolidation of holding was not very satisfactory, excepting in Punjab, Haryana and western Uttar Pradesh where the task of consolidation was accomplished. But in these states, there is a need for reconsolidation again due to subsequent fragmentation of holdings under the population pressure.

CHOICE OF APPROPRIATE FORM OF FARM ORGANISATION

After Independence there was also a debate on the choice of farm organisation. The J.C.Kumarappa Committee (1949) expressed the view that peasant farming would be the most suitable form of cultivation although small farmers should be pooled under a scheme of cooperative or joint farming. Besides, collective farming and state farming was for the development of reclaimed wasteland where landless agricultural workers could be settled. According to the First Five Year Plan, the formation of co-operative farming associations by small holders would ensure efficient cultivation. The Second Five Year Plan asserted that a step should be taken for the development of cooperative farming, so that a substantial proportion of land is cultivated on co-operative lines. The Third Five Year Plan agreed to this proposal, but maintained that with the implementation of the programme of land reforms, the majority of cultivators in India would consist of peasant proprietorship. They should be encouraged and assisted in organizing themselves on voluntary basis for credit, marketing, processing, distribution and also for production.

CHANGES IN AGRARIAN STRUCTURE

After Independence, a number of land reform measures were undertaken in the 1950s and 1960s which were quite revolutionary in nature and impact. As a result of abolition of zamindari, the feudal mode of production came to an end. Also the proportion of area under tenancy declined.

However, tenancy reforms failed to yield much positive impact, as a large number of tenants-at-will were evicted from land. Also the benefits of consolidation of holdings remained confined to Punjab, Haryana and western Uttar Pradesh.

Table 3.2

Concentration Ratio of Ownership Holdings by State

State	1961	1971
Andhra Pradesh	0.764	0.732
Bihar	0.701	0.712
Gujarat	0.683	0.683
Kerala	0.756	0.702
Madhya Pradesh	0.632	0.621
Maharashtra	0.707	0.682
Karnataka	0.663	0.663
Orissa	0.684	0.645
Punjab and	0.749	0.776
Haryana	NA	0.753
Rajasthan	0.654	0.607
Tamil Nadu	0.749	0.751
Uttar Pradesh	0.621	0.631
West Bengal	0.666	0.672
All India	0.720	0.710

Source: T. Haque and A.S. Sirohi (1986).

Thus, the first phase of post-independence land reforms in the 1950s and 1960s yielded a mixed result. It could be termed successful in the sense that all intermediaries were abolished which provided the basis for improvement in agricultural productivity. Nevertheless, the unequal agrarian structure remained in place. In 1953-54 nearly 8 per cent of the ownership holdings accounted for about 51 per cent of the total area, while in 1971, about 10 per cent of the holdings accounted for 54 per cent of the total land. In other words, there was an increasing tendency towards unequal power structure in terms of land ownership (Table 3.2). Although the average size of holdings declined from 2.39 hectares in 1953-54 to 2.21 hectares in 1971, in several states, the average size of large farms increased.

PATTERN OF LANDHOLDINGS

The earliest comprehensive picture of the distribution of total owned area by size classes of

ownership holdings has been presented by the National Sample Survey (8th Round) pertaining to the year 1953-54.

In a discussion of the pattern of landholdings we include here the size distributions of ownership holdings as well as of cultivation or operational holdings (farms). By ownership holding is meant the area owned by a single household. And by cultivation or operational holding is meant the area cultivated or operated by a single household. (Operational Holding = Ownership Holding — Land Leased out + Land Leased in) Ownership holdings as well as cultivation holdings may be held either as a single plot of land or as several plots scattered at different places. When a holding is held in several scattered plots, it is called a 'fragmented holding' and the process creating such holdings is termed 'fragmentation'. An attempt also has been made here to give a picture of the extent of fragmentation in the agricultural holdings in India.

Our purpose is to focus attention on the distribution of holdings in the Indian agricultural sector at one or more points of time between 1947-48 and 1961-62, for such a distribution is not only an important aspect of the structure of Indian agricultural economy but may also explain the structure of other inputs, in so far as the use of other inputs is itself influenced by the pattern of landholdings.

Pattern of Ownership Holdings

Concentrating now on the pattern of ownership holdings, it may be noticed that nearly 310 million acres of land were estimated to be owned by rural households in 1953- 54. This was nearly 38.4 per cent of the total geographical area and 61 per cent of the topographically usable land. A certain proportion of land in the rural areas, no doubt, was owned by urban households. The owned area of 310 million acres was held by 66 million households.

The average size of ownership holdings in the rural areas was thus only 4.72 acres. But when we look at the size-distribution of holdings, the situation is found to be far worse.

Nearly 22 per cent of the households in the rural areas did not hold any land. These households would be largely of agricultural labourers who did not own any land, and particularly of cultivating small tenants. The next 24.9 per cent of the households together held only 1.4 per cent of the land and each of these held an area less than 1 acre in size. Thus, nearly 47 per cent of the households either held no land or held land of area less than one acre. At the other extreme, less than 1 per cent of the households owned among themselves

nearly 16 per cent of the owned area, and the size of each of these holdings was 50 acres and above. If we add the immediate lower groups also, then nearly 3.4 per cent of the households held among themselves 34 per cent of the total area. In the lowest size group (0.01 to 0.99 acres) the average size per holding was only about 0.26 acre, while in the size-group over 50 acres the average was about 87.4 acres. It indicates that the disparity in ownership of landholdings was very high.

The disparity in the distribution of ownership holdings seems to have been the highest in South India, where the concentration ratio was 0.74 and the lowest in North India and West India, where the concentration ratios were 0.64. The average size of holding was the lowest in South India (about 3.42 acres), while it was the highest in Central India (about 8.29 acres).

How far does such extreme inequality in the distribution of ownership holdings affect the agricultural economy is a question that naturally follows. It may be pointed out that, the efficiency of cultivation which depends on appropriate combination of other factors of production with land could, at least in theory, be free from the pattern of ownership.

Pattern of Operational Holdings

The concept more appropriate to efficiency of agricultural operation is the concept of "operational" or "cultivation" holding. This will be considered in this section. Theoretically, even with a very adverse distribution of ownership, through a process of leasing in and leasing out, it is possible to have a pattern of operational holdings, less inconsistent with the dictates of efficient technology, or with the requirements of the laws of returns, or of returns to scale. As a matter of fact, if there was a very little of leasing out of land by large owners and very little leasing in by small owners, the pattern of operational holdings would look much the same as that of ownership; and if that were the pattern of operational holdings, there would be too many tiny farms (operational holdings) and some farms too large for efficient cultivation.

Table 3.3 shows that, although a small decline in concentration of land took place after land reform legislation, land distribution remained highly skewed. In 1953-54, the bottom 60 per cent of holdings operated 15.5 per cent of area while in 1960-61 the bottom 62 per cent of holdings operated 19 per cent of area. At the other end, in 1953-54 the top 5.8 per cent of holdings operated 36.6 per cent of area while in 1960- 61 the top 4.5 per cent operated 29 per cent of area.

Table 3.3

Size Distribution of Operational Agricultural Holdings, 1953-54 and 1960-61

Size (acres)	1953-54		1960-61	
	Percentage of total holding	Percentage of area operated	Percentage of total holding	Percentage of area operated
Very small (up to 0.99)	19.7	1.1	17.1	1.3
Small (1.00-4.99)	40.3	14.4	44.6	17.9
Medium (15.00-24.99)	6.7	16.8	6.0	17.0
Large (25.00-49.99)	4.3	19.6	3.5	17.4
Very Large (50.00 & above)	1.5	17.0	1.0	11.6
Total	100.0	100.0	100.0	100.0

CONCLUSION

Despite large efforts made in the direction of agrarian reforms in the 1950s and 1960s, the situation relating to the agrarian structure remained highly unsatisfactory. According to the Planning Commission's Task Force on Agrarian Relations, although the laws for the abolition of intermediary tenures were implemented fairly efficiently, the tenancy reforms and tenancy legislation fell short of proclaimed policy. Highly exploitative tenancy in the form of crop sharing still prevailed in large parts of the country. Such tenancy arrangements not only perpetuated the social and economic injustice, but also acted as a constraint to agricultural modernisation. Besides, in the wake of the green revolution, while the rich farmers' condition improved, those of the agricultural labourers and the poor tenants remained more or less unchanged. In fact these failures led to land related conflicts including Naxalite movement in several places.

KEY WORDS

Bhoodan and Gramdan: These refer to the land management launched by late Vinoba Bhave in 1951. This was to persuade land owners in each village to renounce their land rights after which all the lands would become the property of a village organisation for either equal redistribution or joint cultivation.

Ceilings on Land Holdings: It relates to the fixation of maximum limit beyond which nobody can hold any land.

Consolidation of Holdings: It refers to bringing together all plots of land of a cultivator in one compact block.

Land to the Tiller: It refers to the system of land tenure in which actual tillers or cultivators also have the ownership or occupancy right.

Mahalwari System: Relates to the system of land tenure in which land rights were settled with the entire village under Regulation IX of 1833 Act. This required each peasant of the village to contribute to total revenue demand of the village on the basis of the size of the land he cultivated. This was prevalent in Punjab and parts of United Provinces.

Patron-Client Relationship: It refers to exploitative agrarian relations in which landlords exploit the tenants or workers and yet there is so much dependence on landlords that the tenants or actual workers cannot severe the relationship.

Ryotwari System: It refers to the system of land tenure in which each ryot was recognised by law as the proprietor with the right to transfer or mortgage or sublet the land. This was provided under Regulation VII of 1822 Act mainly in the provinces of Bombay and Madras.

Zamindari System: Refers to the system of land tenure in which land rights of intermediaries were confirmed through permanent settlement in 1793 by Lord Cornwallis and continued subsequently even under temporary settlement scheme

Synopsis of Topic

- *What is a Judicial Review?*
- *Background*
- *Features of Art. 31B*
- *9th Schedule*
- *Objectives*
- *Nature and Scope of Article 31B combined with the 9th schedule*
- *Evolution of the Concept of Judicial Review*
- *Importance of Judicial Review*
- *Judgements after the 1st amendment*
- *The Doctrine of Basic Structure*
- *Scope of judicial review for laws placed under 9th Schedule*
- *Conclusion*

9th Schedule of Indian Constitution and Judicial Scrutiny

Whenever any new law is implemented in India or any amendment to existing law is made, if it does not comply with constitutional norms, is nullified or reverted. But, this is not the same for every law which is enacted and the exception in such cases are backed under Article 31B. If any law is kept under 9th schedule, it goes unchallenged even if it violates the FRs (Fundamental Rights). But, in judgements followed, it is now well established that although there is a constitutional validity of such laws and government is entitled to place any law under the umbrella of 9th schedule, there are also prone to judicial scrutiny if they do not comply with "basic structure doctrine" established in the landmark judgement of Keshavananda Bharati.

What is a Judicial Review?

Judicial review may be defined as "scrutiny of the decisions made by the legislature and executive, by the judiciary to check whether they are in consonance with constitutional values and ideals of equity, justice and good conscience". This prevents the decision making bodies to act against public welfare and restricts them from making laws for their own good.

Background

9th schedule along with Article 31B was added in 1951 through the first amendment in Indian Constitution. It was meant to enact some new laws which were important to transform India into a more egalitarian society. The amendment was the need of the hour as in the case of ***Kameshwar Singh v. The State of Bihar***, government's decision to classify zamindars into different categories for procuring their land was criticized by the judiciary and it was a major setback as the Court stated that doing so was a violation of Art. 14 that guarantees equal protection of laws to the citizens as such classification was discriminatory.

Article 31B states that, "none of the Acts and Regulations specified in the Ninth Schedule nor any of the provisions thereof shall be deemed to be void, or ever to have become void, on the ground that such Act, Regulation or provision is inconsistent with, or takes away or abridges any of the rights conferred by, any provisions of this Part, and notwithstanding any judgment, decree or order of any court or tribunal to the contrary, each of the said Acts and Regulations shall, subject to the power of any competent Legislature to repeal or amend it, continue in force".

Hence, when any legislation is kept under the 9th schedule, it does not matter whether it violates the fundamental rights of a person. This provision restricted the rights of the judiciary and on other hands, increased the power of the legislature. Hence, it started the conflict between the judiciary and the government.

Features of Art. 31B

- **Retrospective in nature-** If an act is held unconstitutional and thereafter is put under 9th scheduled it will be considered as its part since its commencement.

Jeejeebhoy v. Assistant Collector - the court stated that "Article 31B shows that it is a drastic and novel method of an amendment".

- **To protect property rights-** Article 31B was inserted in the constitution for legislation governing rights relating to the property. But, in the years following, it has resulted in the insertion of other laws also for purposes other than that related to society and economics.

9th Schedule

The 9th schedule was drafted by the first government of independent India in the tenure of J

L Nehru. It represents a drastic but innovative technique of amending the Indian Constitution. It is a method to bypass the judicial review and judicial scrutiny. Any act which is added under the 9th schedule gets resistant from any encroachment from judiciary even if it infringes the fundamental rights of an individual.

The result of the clash of ideology between the conservative judiciary and progressive and growth-oriented legislature and executives, it was added to cover only a few legislations under its ambit, but with the passage of time, the government used it as a blanket for many types of legislation covering over 250 Acts in the present.

Objectives

1. To implement various land reforms, after independence.
2. Abolition of Zamindari system in order to put an end to feudalistic society and to provide a pavement for socialism to take its place.
3. To immunize certain legislations which act as a blockade in bringing reforms and that have the potential to infringe fundamental rights.
4. To uphold the interests of weaker sections of the society by bringing them at par with the other sections of the society.
5. To meet the constitutional goal of establishing an egalitarian society and to reduce the concentration of land in few hands by dividing it into the farmers.

Nature and Scope of Article 31B combined with the 9th schedule

It is now an established fact that the Ninth Schedule has transformed itself to become a dustbin and house for each disputed law which is passed by the lawmaking body. Such a circumstance was not conceived at that time when the First amendment was made to the Indian Constitution. It is contended here that a right elucidation of the language of Art.31-B can adequately end this problem.

Arts.31-A (1) and 31-B are planned to work as insurance against results which could somehow or another mean lead to the breach of the constitutional rights specially, the fundamental rights granted under part 3. Enactment falling under any piece of Art.31-A (1), including the arrangements, can likewise get insurance under Art.31-B. In this association, to know further about the connection between Arts. 31-A and 31-B, Professor A.R. Blackshield's observation is pertinent to the discourse. He considered the opening

expressions of Art.31-B (Without reference to the consensus of the arrangements contained in Art.31-An) as the basic interconnection between Articles 31-A and 31-B. That gives ascend to a derivation that Article 31-B read with Ninth Schedule is particularization of Article 31-A in itself.

But sadly, the legal methodology on this issue isn't on the above lines, due to the outcome that Ninth Schedule has become a ready weapon for ensuring presence of illegal laws based on time, subject and space.

In ***Vishweshwara v. State of Madhya Pradesh***, the Court observed Art.31-B as free of Art.31-A. From there on, the opening expressions of Art.31-B were translated by the Court in ***N.B. Jeejeebhoy v. Assistant Collector***, Thana by suggesting that "the Demonstrations and guidelines indicated in the Ninth Schedule would have the insusceptibility regardless of whether they didn't pull in Art.31-A of the Indian Constitution." The Court's reasoning was based on the fact that "if each Demonstration in the Ninth Schedule would be secured by Art.31-A, this Article would become repetitive." Further, they got support from the presence in the Ninth Schedule of laws irrelevant and reasoned that Art.31-B was not represented by Art.31-A.

It is submitted that this approach is quite deceptive, and the correct conclusion was stated by J. Bhagwati by an in-depth analysis in the celebrated judgment of ***Minerva Mills v. Union of India***, when he expressed that "the Ninth Schedule of Art.31-B was not planned to incorporate laws other than those secured by Article 31-A." In such manner, it is submitted that the right translation of the expression 'without reference to the sweeping statement of Art.31-A' can be understood through the accompanying method. The ambit of Article 31 is able to expand itself to cover five kinds of laws, comparing to sub-provisos a) to e) of its first clause. Presently, by giving that Art.31-B does not take away from the sweeping statement of Article 31-A, what is implied is that in spite of the fact that a law might be incorporated into the Ninth Schedule under Article 31-B, it, in no manner deprives a person of his rights that are protected under Article 31-A.

Evolution of the Concept of Judicial Review

Judicial Review plays an important part in the enforcement of the rights granted under the Indian Constitution. By acting as a cornerstone for the principle of constitutionalism, it may be justified as it upholds the principle of the rule of law and the doctrine of separation of powers. Basically, it comprises the power of the Courts to render any law or order,

unconstitutional or void based on its inconsistency with the basic motto behind the law of the land.

Prior to studying the role of the judiciary in reviewing the laws inserted under the 9th schedule, it's important, firstly to discuss the history and evolution of judicial review. The Arthashastra, written by Chanakya, Smritis, and, Dharmashastras may be counted as one of the earliest sources that show the existence of the judiciary. The time when they were written had the firm belief that the law is always above the rule so that the government cannot enforce a law which is tyrannical in nature. Although the King was considered as the fountain and prominent source of justice, he himself was expected to resolve all disputes based on the principle of Dharma. Even during the Mughal period, the highest judge in the kingdom used to be the King.

Similarly, in ancient Greek also, the philosophers emphasized in the welfare of people and their relation with law, and opposed every law which was unjust and tyrannical. Aristotle by interpreting the philosophies of Plato in a more practical form concluded that "the nature of the law should be in consonance with Constitutional values.

In the UK and USA, the advent of judicial review emerged much earlier in comparison to India. In Britain, it was due to Lord Coke's instrumental role in Dr. Bonham's case (1610) which ascertained that the Common law is always above the House of Commons. Similarly, in the USA, the judicial review was established in the case of ***Marbury v Marsden*** but the doctrine traces its origin to the Bonham case which is regarded as a social and political heritage from Britain. The judgement in Marbury derived the doctrine of judicial review from the written constitution itself and subsequently designated the constitution as the supreme law and States the need for a more rigorous statutory interpretation.

In India, during the post-independence period, due to the emergent need of enforcing the individual as well as the group rights, the concept of judicial review was considered as a necessity. In the broader scale there are mainly three aspects of judicial review, they are-

- Judicial review of administrative actions
- Reviewing Judicial pronouncements, and
- Review of the action of the legislature.

Unlike in the USA, where the nature of the judicial review is more substantial, India has a more procedural review system. In addition, Indian Judicial review has its root directly in

several Articles of the Indian Constitution e.g. Article 13, 32, 131 to 136, 143, 226 and 227 etc. which is not a case in countries like the USA.

Importance of Judicial Review

Judicial review, as has been mentioned earlier, due to its inherent nature with Constitutional norms, is responsible for balancing the interests and powers of different organs of the government and in assisting in the maintenance of control by marking a boundary to limit uneven encroachment of the authorities towards a person's constitutional rights and among themselves. It's important to state Dr. B. R. Ambedkar's observation on judicial review. He remarked in the Constitutional Assembly,

"If I was asked to name any particular Article in the Constitution as the most important, it is Article 32 without which the Constitution would be a nullity- it would not refer to any other Article except this one. It is the very soul of the Constitution and the very heart of it and I am glad that the house had realized its importance".

Judgements after the 1st amendment

Initially after the institution of Art. 31B and 9th schedule, the court agreed with the government that such provisions are necessary for agrarian reforms and in the establishment of equality on a larger level. But, the tussle between judiciary started from the case of ***Golaknath v. State of Punjab (1967)*** and continued until landmark judgement in ***Keshavananda Bharati (1973)***.

The facts of the Golaknath case- The Golaknath family owned 500 acres of land in Punjab. But, due to Punjab Security and Land Tenures Act of 1953, they were only allowed to keep 30 acres of land with them. They challenged the act on the grounds of violation of their fundamental rights of property. The foremost question before the court was- Can fundamental rights be amended?

Judgement- the Parliament cannot curtail the fundamental rights of an individual.

1. ***Keshavananda Bharati v. State of Kerala–*** The court upheld the judgement in Golaknath and introduced a new concept of "**Basic structure of the Indian Constitution**" and stated that, "all provisions of the constitution can be amended but those amendments which will abrogate or take away the essence or basic structure of constitution which included Fundamental Rights are fit to be struck down by the court".

2. ***Waman Rao v. Union Of India–*** In this important judgement, the Apex Court ruled that, "those amendments which were made in the constitution before 24th April 1973 (date on which judgement in Keshavananda Bharati was delivered) are valid and constitutional but those which were made after the stated date are open to being challenged on the ground of constitutionality and the State is only immunized for its acts before the judgement in Keshavananda Bharati. This is also known as "**Doctrine of Prospective Over-Ruling**" which means that 'only what follows after is bound to abide by the rules and what has happened earlier will not be taken in the account'
3. ***I R Coelho v. State of Tamil Nadu***-Two important questions were referred to the higher bench by the constitutional bench of 5 judges which remained unanswered in the judgement in Waman Rao. The questions were,
    1. Can an Act or the part which violates Arts. 14, 19 or 21 be included in 9th schedule?
    2. Is it mandatory that only a constitutional amendment which destroys the basic structure be struck down?

Judgement- It was held that every law must be tested under Art. 14, 19 and 21 if it came into force after 24th April 1973. In addition, the court upheld its previous rulings and declared that any act can be challenged and is open to scrutiny by the judiciary if it is not in consonance with the basic structure of the constitution. In addition, it was held that if the constitutional validity of any law under the ninth schedule has been upheld before, in future it cannot be challenged again. Thus, it put a check on the legislature to formulate laws so that they do not take away the rights of the citizen and thus settled all the dilemmas prevailing over the law under the 9th schedule.

The Doctrine of Basic Structure

The doctrine of basic structure is established on the basis of the difference between constituent power which is considered as the original power of framing the constitution and the nature of constituent power which the Parliament possess through the aid of Article 368. It is argued that by adding the words "constituent power" in Article 368, the parliament cannot be considered similar to the Constitution Assembly. It is always the Parliament which must follow the laws established through a controlled Constitution.

While evolving, the issue which was mainly examined was the issue of 'use of the device under Article 31B to immunize the laws under ninth schedule'. In Waman Rao, the court answered in the affirmative by making the part three of the constitution inapplicable to such laws which were incompatible with basic structure doctrine and were placed under the ninth schedule. It was stated by the apex court that such act of the legislature of putting the laws violative of fundamental rights under the ninth schedule will remove the control over legislative power and will render the basic structure doctrine redundant.

In addition, it is worth mentioning that the whole purpose of the basic structure doctrine is to save the golden triangle of article 21 read with articles 14 and nineteen excluding the entire part 3 of the constitution from the effect of the laws placed under the ninth schedule.

Scope of judicial review for laws placed under 9th Schedule

Before discussing further, in one word it may be said that the scope of reviewing the laws placed under 9th schedule is limited. The first amendment was brought by the parliament after the Kamleshwar case and with the insertion of article 31B along with the 9th schedule for giving effect to agrarian reforms. The provisions inserted were made to provide immunity to the laws inserted under them from judicial encroachment.

After the first amendment, the major landmark case in which the question of immunity granted to parliament was presented before the court was the case of ***Shankari Prasad***. It was asked that whether Article 31B read with schedule 9 was unconstitutional by excluding the scope of judicial review. It was contended that excluding judicial scrutiny for such laws will amount to a violation of Article 13(2).

The Court rejected the petition by stating that "there is a chart clear demarcation between ordinary law and constitutional law, and so, the amendments made under Article 368 are not affected by the application of article 13 (2). In addition, the parliament under Article 368, is empowered to amend the fundamental rights also and at such instances judicial encroachment is impermissible.

But, at a later stage, in Golaknath case, it was held that the parliament has no power to amend the fundamental rights including the provisions on personal property. The parliament aggrieved by the judgement in ***Golaknath***, passed the 24th amendment in 1971, which empowered it to amend any part of the Constitution including the fundamental rights.

This stage i.e. the years following 24th amendment may be considered as the years of a tussle

on the issue of power and authority between the legislature and the Indian Judiciary which followed its course until the landmark judgement in Kesavananda Bharati (24 April 1973).

In its decision in Kesavananda Bharati case, the Apex Court through its largest constitutional bench of 13 judges stated that "although the amendments made under Article 368 are Constitutional, the court is entitled to reject any of them if their nature is such that 'they may violate the basic structure of the Indian Constitution". The criteria would be to check whether the concerned statute has the potential to violate any article which acts as a touchstone for the whole Indian Constitution.

This case put a check on the enormous power of the parliament through the introduction of basic structure doctrine and made the judiciary more powerful. This case is also regarded as the saviour of Indian democracy.

However, when a similar matter reached the court in ***Indira Gandhi v Raj Narain***, regarding 39th amendment by the parliament which added some controversial laws under the ninth schedule, the court held that "ordinary laws placed under 9th schedule cannot be subjected to basic structure test and only the constitutional amendments which are made through Article 368 are prone to judicial scrutiny if they are violative of basic structure.

But, even after the judgement in the ***Keshavananda Bharati case***, the legislature tried to threaten judicial review by passing the 42nd amendment which again opened the way for amending the fundamental rights. However, this fraud which was committed by the parliament through 42nd amendment was later corrected by the Apex Court in **Minerva Mills case**.

In Minerva Mills, the Supreme Court struck down clauses 4 and 5 which were added to Article 368 through 42nd amendment and observed that "the donee of a limited power cannot convert his limited power into unlimited one by exercising the power that he possesses". The doctrine of basic structure and the judgement in the case of Minerva Mills was later affirmed in many subsequent judgements including ***Waman Rao v Union of India, I R Coelho and M Nagaraj***.

Conclusion

While concluding, it may be stated that it was some sort of deliberate attempt of the constitution framers to exclude the scope of judicial review for the laws placed under the ninth schedule. This is evident from the fact that the nature of the right to property was, from

its inception, such to invite various disputes. However, the misuse of Article 31B and ninth schedule started only after the 4th amendment when few non-agrarian laws were excluded from the scope of judicial scrutiny.

But ultimately, due to the intervention of the Apex Court from Shankari Prasad to Keshavananda Bharati had ensured to put a check on the powers of the law making body by describing the basic structure of the Indian Constitution. It may be stated that when the parliament deleted the law of the right to property through the 44th amendment, it should have amended the provisions of the ninth schedule to allow judicial review. But, it didn't happen and thus, Article 31B along with ninth schedule continued to act as a blanket of the parliament to include any law that it considers fit and proper, opening the possibility of the abuse and misuse of 9th schedule.

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UNIT – 5

SYNOPSIS OF UNIT

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- Registration of Real Estate Agents
- Functions & Duties of Promoter
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- *Application for registration under RERA*
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- *Consequences of non-registration*
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Registration of Real Estate Project

Overview

One of the salient features of RERA is the requirement of registration of the real estate project **by the 'Promoter'** with the Real Estate Regulatory Authority ("**Authority**"), which falls within the planning areas. In the absence of such registration, the Promoter of a **real estate project** is not permitted to advertise, market, book, sell or offer for sale, or invite

persons to purchase in any manner in any real estate project or part of it.

RERA defines promoter as ("**Promoter**"):

1. Builder;
2. Developer;
3. Development Authority;
4. Society; or
5. Holder of Power of Attorney from the owner of the land on which building / apartment is constructed or plot is developed for sale.

A "**real estate project**" is defined as the development of a **building**, converting an existing building or a part in **apartments**, development of land into apartments / plots for the purpose of selling and includes common areas, development works, all improvements and structures thereon and all easement, rights and appurtenances belonging to such building or land or structure.

The terms "**apartment**" and "**building**" as used in the aforesaid definition which is defined under the Act not only covers residential projects but also commercial projects.

Who needs to register?

The following persons are required to register the real estate project with authority:

i. Any person who constructs or who wants to build an independent building or a building consisting of apartments or modification of existing structure into apartments to sell apartments to the persons.

ii. Any person who develops the land into a project, to sell projects to other persons.

iii. Any development authority or another public body in respect of allottees of

iv. Buildings or plots constructed by such authority or public body on who owns land or placed at their disposal by the government.

v. Plots owned by development authority or which is placed at their disposal by the government to sell the apartments.

vi. A State-level cooperative housing finance society and a primitive cooperative housing society which constructs the apartments or buildings for its members or to the allottees.

vii. Any person who acts himself as a builder, 159olonizer, contractor, developer, estate developer or by any different name or claims to be acting as the holder of a power of attorney from the owner of the land on which the building or apartment is constructed or plot is developed for sale.

Note: The person who builds or converts a building into apartments or develops a plot for sale and the persons who sell flats or plots are different persons, but both of them are deemed to be promoters are liable to follow the rules and regulations specified under real estate Act.

In terms of Section 3 of RERA, the following real estate projects are not required to be registered:

1. Where the area of the land does not exceed 500 square meters or number of apartments does not exceed 8 (eight);
2. Where the Promoter has received completion certificate for a real estate project prior to commencement of RERA; and
3. Where the work involved is limited only to renovation or repair or re-development and does not involve marketing, advertising, selling or new allotment of any apartment, plot or building.

In addition to the registration of real estate projects, every Real Estate Agent is also required to get itself registered before facilitating the sale / purchase of any real estate project or part of it, by making an application along with requisite information / documents and fee.

Application for registration under RERA

In terms of Section 4 of RERA, an application required to be made by every Promoter along with the prescribed fee for registration of its real estate project and shall be *inter alia* accompanied with the prescribed documents including:

1. An authenticated copy of the approvals and commencement certificate obtained from the competent authority;
2. Sanctioned plan, layout plan and specifications of the proposed real estate project as sanctioned by the competent authority; and

3. A declaration by the Promoter supported by an affidavit *inter alia* stating:

    1. that the Promoter has a legal title over the land on which development is proposed;
    2. the details of all encumbrances on such land;
    3. the time period within which the Promoter undertakes to complete the real estate project;
    4. that the Promoter would deposit 70% of the amount realized for the real estate project from the allottee(s) from time to time in a separate bank account.

Validity of registration under RERA

The registration granted shall be valid for a period declared by the Promoter for completion of the real estate project or phase thereof as submitted in the affidavit along with the application for registration.

The registration granted by the Authority may be extended by it upon receipt of application from the Promoter in this regard in the following circumstances:

1. **Force Majeure**: war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project.
2. **Other than force majeure**: The Authority may extend the registration to a maximum period of one year if it feels that the circumstances and reasons for extension of the case are reasonable.

Revocation of registration

RERA stipulates various compliances with respect to a real estate project. If the same are not complied with, the registration of an already registered real estate project may get revoked. The Authority may revoke a registration on the basis of a complaint received or *suo motu* by the Authority by giving 30 days' notice in writing to the Promoter of such real estate project stating grounds of proposed revocation and instructing him to show cause as to why the registration should not be revoked. On the basis of the Promoter's reply to the show cause notice, the Authority may allow the real estate project to be registered or alternatively, may cancel the registration.

A show cause notice proposing the revocation may be issued on the following grounds:

1. If the Promoter defaults in doing anything required under RERA;
2. If the Promoter violates any terms and conditions of the approval granted by the Authority;
3. If the Promoter is involved in any kind of unfair practice or irregularities such as any misrepresentation or false representation and / or publication of any advertisement / prospects of services that are not intended to be offered; and / or
4. If the Promoter indulges in any fraudulent practices.

Consequences of non-registration

In case of non-registration of the real estate project, Section 59 stipulates a penalty of up to 10% of the estimated project cost and in case of continued default, an additional fine up to 10% of the estimated project cost or imprisonment up to 3 (Three) years or both.

In terms of the provisions of Section 31 of the RERA legislation, any aggrieved person may file a complaint with the Authority against the Promoter for violation of the provisions. The Authority has been entrusted with very wide powers under RERA in relation to any non-compliance on the part of the Promoter including levy of penalty as well as taking such other remedial measures or safeguards as may be deemed fit by the Authority. The same may include granting of interim order(s), refund of consideration amount received by the Promoter from various allottee(s), change in the developer / Promoter, etc., on a case to case basis.

Lending by Financial Institutions/Banks

In the event, any bank / financial institution decides to lend money to retail buyers under the real estate project, which is not registered or registration of the same has been cancelled, such decision may be a conscious call on the part of such bank / financial institution since such lending will involve high risk factors and uncertainties regarding the completion of the real estate project or actions to be taken by the Authority in relation to such real estate project / Promoter at a later stage, which may be detrimental to the interest of such bank / financial institution or other stakeholders. Hence, the Banks / Financial Institutions have also been insisting upon registration of real estate projects under RERA before sanction of the loan or approval of the real estate project in order to protect their interest

Synopsis of Topic

- *Overview*
- *Who is a Real Estate Agent?*
- *Requirement of registration*
- *Procedure for registration*
- *Documents for registration*
- *Validity*
- *Deemed registration*
- *Conditions for RC*

Registration of Real Estate Agents

Overview

One of the most important interfacing in the real estate sector is held by the brokers or real estate agents today. They form a vital bridge between the real estate industry and the buyers of real estate properties. It is a fact that flat buyers and brokers interact commercially. There are innumerable cases where the consumers have, legally or not portrayed their dissatisfaction towards the services of their agents. Hence RERA seeks to smoothen out these anomalies by regulating the industry of real estate agents. Chapter 2 of the RERA is partially dedicated to the registration of real estate agents with the appropriate authorities.

Who is a Real Estate Agent?

Section 2(zm) of RERA defines real estate agents. According to the definition, a "real estate agent" means any person, who negotiates or represents other persons for transfer of a real estate property by way of sale to another person and receives remuneration or fees or any other charges for his services whether as commission. A real estate agent is also a person who introduces, through any medium, prospective buyers and sellers to each other for negotiation for sale or purchase of real estate property, as the case may be, and includes property dealers, brokers, middlemen etc.

Requirement of registration

To achieve the objective of regulating the real estate sector and to standardize this sector making it more transparent, the Act and the Rules made thereunder require for the real estate agents to obtain a registration certificate from the Real Estate Regulating Authority. RERA also says that the real estate agents will also be liable for any flaws in the project and can be prosecuted for any misconduct in the business. It is Section 9 (1) of RERA that mandates the registration. Section 9 prohibits an agent to operate his business without such registration.

Procedure for registration

Rule 8 of the National Capital Territory of Delhi Real Estate (Regulation and Development) (General) Rules, 2016 (**"Rules"**) read with Section 9 (2) of RERA state that every real estate agent, required to register, shall make an application in writing to the Authority established under RERA Form 'G', in triplicate, until the application procedure is made web based.

Documents for registration

- Name, registered address, type of enterprise (proprietorship, societies, partnership, company etc.);
- In case of a Real Estate Agency the particulars of incorporation including the bye-laws, MoA , AoA,
- Name, Address, contact details and photograph of the real estate agent or director or Partners
- the authenticated copy of the PAN card of the real estate agent;
- the authenticated copy of the address proof of the place of business.

Validity

The registration certificate is valid for 5 years from the date of receipt. It can be revoked before the expiry of this period in case the agent breaches the RER Act or Rules.

Deemed registration

According to Section 9(4) of the Act read with Rule 9 of the Rules, if the Authority does not grant or reject the registration certificate within 30 days, hereon the completion of the period specified under sub-section (3), if the applicant does not receive any communication about the deficiencies in his application or the rejection of his application, he shall be deemed to have been registered.

Conditions for RC

The following conditions/ compliances are to be adhered to by the real estate agents after attaining the registration certificate:

a) Not to facilitate sale of unregistered property;

b) Due maintenance of books of accounts records and documents as provided under rule 14;

c) Avoid use of any unfair trade practices as enumerated under the rules assistance to enable the allottee and promoter to exercise their respective rights and fulfil their respective obligations at the time of booking and sale of any plot, apartment or building, as the case may be; and

d) Generally adhere by the provisions of the Act and the Rules.

These conditions are also mentioned as conditions in the registration certificate as well as Section 10 of RERA.

Synopsis of Topic

- *Overview*
- *Duty to get the project registered with the regulatory authority [Sec. 3]*
- *Duty to create a webpage and display the project [Sec. 11(1)]*
- *Duty not to advertise or make offer for sale without registering the project [Sec 3(1)]*
- *Duty to make available certain documents at the time of booking and issue of allotment letter [Sec.11(3)]*
- *Duty to obtain the completion certificate or the occupancy certificate [Sec.11(4)(b)]*
- *Duty to obtain lease certificate [Sec.11(4)(c)]*
- *Duty to ensure veracity of advertisement [Sec.12]*
- *Duty not to accept deposit or advance exceeding 10% of cost without executing agreement to sell [Sec.13]*
- *Duty to keep 70% of the amount received in separate bank account [Sec.4(l)(D)]*
- *Duty to adhere to sanctioned plans and project specifications[Sec.14]*
- *Duty to refund the amount received in case of failure to give possession in time [Sec. 18(1)]*
- *Duty to compensate the allottee for loss due to defective title of the land [Sec. 18(2)]*
- *Duty to enable formation of association or society of the allottees or a federation of the same [Sec.11(4)(e)]*
- *Duty to provide essential services till handing over to the association of allottees [Sec.11(4)(d)]*
- *Duty to execute conveyance in favour of allottees and their association [Sec.11(4)(f)]*
- *Duty to pay all outgoings till transfer of physical possession [Sec.11(4)(g)]*
- *Duty not to create any charge after execution of agreement for sale [Sec.11(4)(h)]*
- *Duty o get the project insured [Sec.16]*
- *Duty not to assign his majority rights and liabilities to a Third Party [Sec.15]*

Functions & Duties of Promoter

Overview

The Act seeks to protect the interest of allottees by casting obligations on the promoter to ensure fairness and transparency in their dealings with them, empowering the regulatory authority to enforce observance of such obligations and providing deterrence by way of stringent penal consequences for defaults. In general, the promoter has been made responsible for all obligations, responsibilities and functions under the Act, the rules and the regulations and also as per the agreement for sale. His responsibility under section 11(A)(a) is towards the allottees or the association of allottees till the conveyance of all the apartments, plots or buildings to the allottees and to their association. His responsibility towards allottees continues under section 14(3) even after conveyance in respect of structural defects brought to his notice within 5 years from the date of handing over possession. Under the provisions of sub-section (3) of Section 18, if the promoter fails to discharges any obligation imposed on him under the Act or in accordance with agreement for sale, he shall be liable to pay compensation to the allottee as per the provisions of the Act. The obligations cast on the promoters and the responsibilities imposed are stated hereunder:

1. Duty to get the project registered with the regulatory authority [Sec. 3]

This is the basic starting point of regulatory framework under which any activity involving the allottees and interface with them can commence only thereafter. The registration serves the basic and most essential purpose of establishing the genuineness of the project and providing essential details concerning the project, the promoter and all persons connected with the project by bringing such information in public domain. For discussion about such obligation and matters relating to it chapter V may be referred to.

2. Duty to create a webpage and display the project [Sec. 11(1)]

After the project is registered, a login ID and password is provided by the Regulatory Authority to the promoter which enables him to have access to the authority's website and create a webpage for the project. The page is to display the prescribed information about the project, the antecedents of promoter and past activities, layout plans, approvals, time of completion and other details which a buyer would necessarily like to have. It also brings the disclosures on record and avoid any dispute as to what was disclosed.

Any Advertisement or prospectus issued or published by the promoter has necessarily to

mention prominently the website address of the Authority wherein all details of the registered projects have been entered and include the registration number obtained from the Authority as well as matters incidental thereto. The promoter is also to upload the quarterly updates of booking of apartments and garages, approvals obtained and pending and the status of the project.

3. Duty not to advertise or make offer for sale without registering the project [Sec 3(1)]

Section 3 of the Act prohibits a promoter from advertising, marketing, booking, selling or offering for sale any plot, apartment or building in the project in the planning area without registering the project unless, the project is such which does not require registration.

In case any invitation to purchase is made by way of advertisement, prospectus or by any other means without getting the project registered, it is violation of the legal provision and might involve penal action in which case the amount of penalty can be up to the amount equal to 10% of the cost of the project as estimated by the Authority. In case of non-compliance of the order in this regard and continued defaults, the promoter may be made punishable with imprisonment for a term up to three years or with fine which may be up to further 10% of the estimated cost or, with imprisonment as well as fine.

4. Duty to make available certain documents at the time of booking and issue of allotment letter [Sec.11(3)]

The promoter is required to make available the following information to the allottee at the time of booking and issue of allotment letter:

i. sanctioned plans, layout plans along with specifications approved by the competent authority, by display at the site or such other place as may be specified by the regulations made by the Authority;

ii. the stage wise time schedule of completion of the project, including the provisions for civic infrastructure like water, sanitation and electricity.

5. Duty to obtain the completion certificate or the occupancy certificate [Sec.11(4)(b)]

The responsibility to obtain the completion certificate or the occupancy certificate or both as per laws of the relevant local authority or any other law in force in the concerned State/ Union Territory, is on the promoter who should, after obtaining it, make it available to the allottees individually or in case any association has been formed, to the association.

In the absence of completion/occupancy certificate it will be unlawful for the promoter to hand over possession to the allottee. The failure to obtain such certificate will result in another default under section 18 i.e., his failure to give possession in accordance with the terms of agreement relating to the time of such handing over, leading to consequences laid down under that section.

6. Duty to obtain lease certificate [Sec.11(4)(c)]

Where the real estate project is developed on a leasehold land, the promoter is responsible for obtaining the lease certificate from the relevant authorities specifying the period of lease and certifying that all dues and charges in regard thereto have been paid. The certificate needs to be made available to the allottees.

7. Duty to ensure veracity of advertisement [Sec.12]

The advertisement, prospectus or any other document designed to canvass and invite the public to purchase should have information which is not incorrect, false or misleading. A buyer taking decision to buy on the basis of false, incorrect or misleading information contained in the advertisement and making an advance or deposit on that basis is entitled to be compensated by the promoter, if he sustains any loss or damage by reason of acting on such information. The compensation is to be determined by the Adjudicating Officer appointed by the Authority and appeal lies against such determination to the Real Estate Appellate Tribunal. What applies to advertisement, equally applies to model apartment, plot or building which also generally move the buyers in taking the decision.

Apart from compensation, the buyer has also the option to withdraw from the project in which case he is entitled to refund of entire money paid with interest at the rate as may be prescribed by the State Govt. in the rules to be framed and the compensation as may be determined by the Adjudicating Authority.

8. Duty not to accept deposit or advance exceeding 10% of cost without executing agreement to sell [Sec.13]

A promoter is prohibited from accepting any sum exceeding 10% of the cost of the apartment, plot or building as advance payment or application fee unless, he executes an agreement for sale with the allottee and gets it registered under the law relating to registration.

The agreement for sale is to be in the form as may be prescribed in the rules and shall specify

the particulars of development of the project along with specifications and internal development works and external development work, the dates and the manner by which payment towards the cost is to be made and the date on which possession of the apartment, plot or building is to be handed over. It will also mention the rate of interest payable by the promoter to the allottees and by the allottees to the promoter in case of their respective default which will be the same in both the cases.

9. Duty to keep 70% of the amount received in separate bank account [Sec.4(l)(D)]

In order to ensure that the amount received by the promoter from the allottees of a particular real estate project is used towards meeting the land cost and cost of construction of that very project only, the law requires promoter to deposit 70% of the amount realized from time-to-time in respect of a particular project, in a separate account with a scheduled bank. The amount so deposited is to be used for the land cost as well as the cost of construction of that project only. To ensure this, the law provides that only so much amount can be withdrawn from this account as does not exceed the amount proportionate to the completion of the project as certified by an engineer, an architect and a chartered accountant in practice.

The promoter is further obliged to get his accounts audited within 6 months after the end of every financial year and produce statement of account certified by the chartered accountant in practice to the effect that the amounts collected has been utilized for the very project and the withdrawal from the bank account has been in accordance with the legal requirement i.e., in proportion to the work completed.

The provision is likely to be instrumental in preventing the prevailing practice of shifting the funds collected from one project to another project causing consequent delay in the completion of the project for which the amount was realized. Many a times projects are launched even before getting approvals and booking amount is realized which in the intervening period used for completion of some other project. The requirement of parking the funds in a separate account and withdrawing from it only for purpose of meeting the cost of that project will avoid the possibility of siphoning of funds from one project to another.

The provision, howsoever laudable, is likely to create some problem in cases where land cost, which forms the major component of total project cost, is met by the promoter out of his own funds before the amount starts coming from the project. Since the entire cost of land is paid but withdrawal is permitted only of proportionate amount based on the proportion of completion, the promoter may not able to get the cost already incurred by him.

10. Duty to adhere to sanctioned plans and project specifications[Sec.14]

The webpage of the project contains details of sanctioned plan or layout plans and also specifications approved by the authorities. These are also made part of agreement for sale. The promoter is under the obligation to develop and complete the project in accordance with such approved plans and specifications disclosed to the allottees and not to depart in any manner including in the matter of fixtures, fittings, amenities and common areas in respect of any apartment, plot or building. He is prohibited from making any addition or alteration in the plan, specifications, fixtures, fittings and amenities unless he obtains the previous consent of the person who bought it on the faith of such disclosure. He can only make such minor additions or alterations as may be required by the allottee himself or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by an authorized Architect or Engineer after proper declaration and intimation to the allottee. The explanation to the provision explains the import of minor additions and alterations as under

"Explanation– For the purpose of this clause, "minor additions or alterations" excludes structural change including an addition to the area or change in height, or the removal of part of a building, or any change to the structure, such as the construction or removal or cutting into of any wall or a part of a wall, partition, column, beam, joist, floor including a mezzanine floor or other support, or a change to or closing of any required means of access ingress or egress or a change to the fixtures or equipment, etc."

The obligation to adhere to the sanctioned plan in respect of individual apartment, plot or building as stated above is not affected by any stipulation contained in any law, contract or agreement and holds good in spite of any contrary stipulation to this effect. The obligation is absolute unaffected by anything contained in any law, contract or agreement.

There are situations where the promoter wants to construct floors in existing buildings or additional buildings or wings not disclosed in original sanctioned layout plan to exploit the available Floor Space Index. In some cases, he may seek to make alteration in common areas within the project. The Act prohibits him from doing so unless he obtains the previous written consent of at least two-thirds of the allottees (other than the promoter) who have agreed to take apartments in the approved buildings. For counting the two-third number, the allottee who is allotted more than one apartment in his own name or in the name of his family, is to be treated as one allottee only. In case apartment etc. are booked by persons such as

companies or firms or association of individuals in their name and also in the name of their associated enterprises or related enterprises all such allottees will be counted as one allottee only.

In the absence of any provision defining 'associated enterprises' and 'related enterprises', the application of the provision may involve disputes leading to litigation.

The obligation to adhere to the development as per sanctioned plan of the building or the layout takes care of a common grievance of the allottees in such matter. The necessity of obtaining previous written consent of the specified number of allottees is likely to put the matter beyond disputes.

11. Duty to refund the amount received in case of failure to give possession in time [Sec. 18(1)]

If the promoter fails to complete the project or is unable to give possession of the building, apartment or plot in accordance with the terms of the agreement for sale or within the time specified therein, the allottee has the option either to withdraw from the project or to continue with it. In the former case, the promoter is under an obligation to return the amount received by him with interest at the rate to be prescribed by the State Government in the rules and also to pay compensation as may be determined by the Adjudicating Officer.

In case the allottee decides to continue with the transaction, the promoter will be liable for interest for every month of delay computed till the date of handing over of the possession, at the prescribed rate. The responsibility of the promoter to refund the amount along with interest and compensation remains the same even when the failure to complete and give possession in time is due to discontinuance of business as developer on account of suspension or revocation of the registration or for any other reason. The allottees any other remedy under any other Act remains unaffected by such refund of consideration and payment of interest and compensation.

12. Duty to compensate the allottee for loss due to defective title of the land [Sec. 18(2)]

In case the allottee sustains any loss due to defective title of the land on which the project is being developed or has been developed, the promoter will be under an obligation to compensate the allottee by the amount and in the manner as may be determined by the Adjudicating Authority. The allottee's claim arising from loss due to defective title of the promoter will not be barred by limitation under the Limitation Act or any other Act in force.

13. Duty to enable formation of association or society of the allottees or a federation of the same [Sec.11(4)(e)]

The Act being a regulatory Act to regulate the construction, sale, management and transfer, deals with matters up to the stage construction is complete and possession is handed over to the allottees except for the limited purpose of rectifying the defects brought to promoter's notice within 5 years of handing over of the possession. The apartments being only an identified part of the building, the management of the building does not rest with individual allottees but with a body representing all the allottees in the project. The law, therefore, envisages formation of a collective body which can be a co- operative society with allottees as members or, a company with allottees as shareholders or, any other association of allottees in accordance with the applicable law of the State. Once such collective body is formed, the promoter is supposed to hand over the management of the building, its common area, amenities and facilities to the collective body and thereafter, the management is carried out in accordance with the law applicable to such collective entity.

In case of layout plan, where the development of law consists of construction of several buildings such societies or associations are formed for each building separately and for management of area and facilities common to all the buildings, an Apex Body or Federation is constituted with membership of individual societies.

The Act requires the promoter and allottees to form an association or society or co-operative society or a federation of the same under the applicable law of the State. The time within which such association or society is to be formed and the manner of constituting it will be governed by the relevant law. In case, however, there is no law governing such association in any State, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project.

The provision as it exists, does not appear to cast responsibility on the promoter of formation of such entity of allottees and to decide the nature of entity to be formed. The promoter under the provision is to enable such formation which imply creating circumstances for such formation and extending all co-operation in the process of formation of the entity decided to be formed by the allottees. This might involve problem in practical working as the allottees are spread over, unknown to each other and may find difficult to come together for taking a decision and acting on it.

14. Duty to provide essential services till handing over to the association of allottees [Sec.11(4)(d)]

As mentioned earlier the management of the land and building and the common area and facilities eventually is to be taken over by the association of allottees. The Act provides that till it is done and maintenance work is taken over by such association/ society, the promoter will have the responsibility of providing and maintaining the essential services, on reasonable charges.

15. Duty to execute conveyance in favour of allottees and their association [Sec.11(4)(f)]

As mentioned, after the project is complete, occupation certificate is issued by the competent authority and possession is handed over to the allottee, the legal title over the building or the apartment or the plot is to be passed on to the allottee and the association of allottees by executing a registered conveyance deed in their favour.

The Act requires the promoter to execute registered conveyance deed of the apartment, plot or building in favour of the allottee and pass on to him all title document pertaining thereto within the period prescribed under the local laws. In case there is no local law providing for execution of conveyance deed and related matters, the conveyance deed in favour of allottee should be executed and registered within a period of three months from the date of issue of occupancy certificate.

While the conveyance deed of building, plot or apartment is to be executed in favour of the allottee, the law requires conveyance of the undivided proportionate title of the allottee in the common area, to be executed in favour of the association of allottees. This should also be done within a period of three months from the issue of occupancy certificate, if there is no local law prescribing such period.

'Common area' has been defined in Sec. 2(n) to include

i. the entire land for the real estate project or where the project is developed in phases and registration under this Act is sought for a phase, the entire land for that phase;

ii. the stair cases, lifts, staircase and lift lobbies, fire escapes, and common entrances and exits of buildings;

iii. the common basements, terraces, parks, play areas, open parking areas and

common storage spaces;

iv. the premises for the lodging of persons employed for the management of the property including accommodation for watch and ward staffs or for the lodging of community service personnel;

v. installations of central services such as electricity, gas, water and sanitation, air-conditioning and incinerating, system for water conservation and renewable energy;

vi. the water tanks, sumps, motors, fans, compressors, ducts and all apparatus connected with installations for common use;

vii. all community and commercial facilities as provided in the real estate project;

viii. all other portion of the project necessary or convenient for its

ix. maintenance, safety, etc., and in common use.

It is seen that common area, inter alia, includes the entire land and amenities built thereon for the real estate project or its phase, if the project is developed in phases. The provision will, therefore, require not only conveyance of land to a different entity viz., the association of allottees or Competent Authority but also appropriation thereof belonging to individual allottees. Modalities of such conveyance will have to be worked out and prescribed by the appropriate Government in the rules to be framed.

The obligation to convey the land and building is contained in State legislations also but with a difference.

16. Duty to pay all outgoings till transfer of physical possession [Sec.11(4)(g)]

The promoter is obliged to pay all outgoings including land cost, ground rent, municipal or other taxes, charges for water or electricity, maintenance charges, mortgage loan and interest thereon and all other liabilities payable to competent authorities, banks and financial institutions relating to the project, out of money collected from the allottees till he hands over physical possession to allottees or their association.

In case he fails to pay such outgoings which remain pending on the handing over of possession, he continues to remain liable even after the property is transferred to the allottees or their association and is also liable for the cost of any legal proceedings which may be taken against him by the person or authority to which the amount was payable.

17. Duty not to create any charge after execution of agreement for sale [Sec.11(4)(h)]

The promoter is prohibited from creating any charge on the apartment, plot or building after the agreement for sale is executed. If any charge is created in contravention of the provision, even if there is any contrary provision in any other law, such charge will not affect the right and interest of the allottee.

18. Duty to get the project insured [Sec.16]

The promoter is under an obligation to obtain all such insurances as the appropriate government may notify which may include –

i. the title of the land and building, and

ii. construction of the real estate project

He is liable to pay all premiums in respect of insurances relating to the project till the project along with the insurance is transferred to the association of allottees. The insurance shall be for the benefit of the allottees or their association and shall stand transferred to their benefit when the agreement for sale is entered with them. All documents relating thereto shall be handed over to the association of allottees when such association is formed.

19. Duty not to assign his majority rights and liabilities to a Third Party [Sec.15]

Having got the project registered and having started the sale of building, apartment or plot, the promoter cannot leave it midway by transferring his majority rights and liabilities to a third party. Such assignments can be possible only with prior written consent of at least 2/3rd number of allottees and approval of the Regulatory Authority. In working out the number of allottees whose consent is required, the promoter himself will not be taken as an allottee. Further, in case the buildings, apartments or plots are booked in the name of family members, all such family members together are to be taken as one allottee only. Similarly if the buildings, apartments or plots are booked in the name of concerns viz., companies, firms or other associations and also in the name of their associated or related entities, the concern and its associated/related entities together will be considered a single allottee.

In case the transfer takes place after obtaining the consent of at least 2/3rd allottees and approval of the Authority, the transferee will step into the shoes of the transferor. This will mean that the rights of the persons who became the allottee prior to such transfer will remain unaffected. Further, the new promoter will now be required to independently comply with all

the obligations to which the outgoing promoter would have been subjected to had the transfer not taken place. In case of any default in complying with such pending obligations, the incoming promoter will be liable to all the consequences which the erstwhile promoter would have been subjected to had he not transferred the rights and liabilities under the project.

The transfer so effected will not result in extension of time to the new promoter for completing the real estate project and he will be bound by the time period for completion declared by the erstwhile promoter in his declaration which is displayed on the website.

Synopsis of Topic

A - Rights of Allottees

- Rights of the Allottees to obtain information
- Right to know stage-wise time schedule of completion
- Right to claim possession
- Right to claim refund in the event of non-completion
- Right to obtain documents and plans

B - Duties of Allottees

- Duty to make payment
- Duty to pay interest at prescribed rate
- Duty to participate towards formation of society/association
- Duty to take physical possession
- Duty to participate in registration of conveyance deed

Rights and Duties of Allottees

A- Rights of Allottees

The Real Estate (Regulation & Development) Act is a comprehensive legislation which regulates the activities of all stakeholders namely, the promoters, the agents and the allottees. The allottee being one of the parties to the transaction is bound by the terms and conditions of the agreement of sale executed in terms of the Act. The Act in Chapter IV lays down the rights of the allottee which he has against the promoter and which are to be enforced by the Regulatory Authority which are as follows:

1. Rights of the Allottees to obtain information

The allottee has the right to obtain information relating to the project including information about the sanctioned plan/ layout plan and the specifications as approved by the competent authority. The information is required to be contained in the webpage of the Authority's site and updated regularly in terms of the provisions of sec. 11(1) of the Act. The right to obtain

this information is significant as Section 14 obligates the promoter to adhere to the sanctioned plan and project specification, departure from which empowers the allottees to act against the promoter and stop him from doing so. In case the promoter intends to make any additional construction beyond what is sanctioned in the plan and disclosed to the allottees, he can do so only after obtaining prior written consent of at least 2/3rd number of allottees. Besides, the allottee is also entitled to all other information which are related to matters provided in the Act, rules or regulations made thereunder or, in the agreement for sale.

2. Right to know stage-wise time schedule of completion

This is also the information required to be displayed on the website. Apart from the time scheduled for the completion, the allottee is entitled to information regarding water, sanitation, electricity and other amenities and services as agreed with the promoter in the agreement for sale.

3. Right to claim possession

The allottee is entitled to claim possession of the building, apartment or plot as per the declaration given by the promoter in his application for registration of the project. While possession of the building apartment or plot is to be given to the allottee, that of common area is to be handed over to the association of allottees.

4. Right to claim refund in the event of non-completion

The allottees is entitled to claim the refund of the amount paid along with interest at the prescribed rates, and compensation as may be determined by the adjudicating authority in the event of failure by the promoter to give possession in accordance with the terms of the agreement for sale. Even if such failure is due to discontinuance of business as a developer on account of suspension or revocation of registration, the allottee's right to claim such refund and other amount remains unaffected.

5. Right to obtain documents and plans

The allottee is entitled to have documents and plans including that of common area after the possession is handed over by the promoter to him or the association of allottees.

B- Duties of Allottees

1. Duty to make payment

Every allottee, who has entered into an agreement to take an apartment, plot or building as

the case may be, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, as may be payable. The obligation to make payment within specified time may be changed with mutual agreement.

2. Duty to pay interest at prescribed rate

The allottee is liable to pay interest at the rate to be prescribed for any delay in payment of any amount which is due from him in respect of cost, maintenance, registration or under any other head. The liability towards interest may be reduced by the mutual agreement between the promoter and the allottee.

3. Duty to participate towards formation of society/association

Every allottee of the building apartment or plot is required to participate in the formation of an association or society or co-operative society of the allottees or a federation of the same.

4. Duty to take physical possession

Allottee shall take physical possession of the building, apartment or plot within a period of two months of the issue of occupancy certificate.

5. Duty to participate in registration of conveyance deed

Under section 17(1) the promoter is required to execute a registered conveyance deed of the building, apartment or plot in favour of the allottee and of the undivided proportionate title in the common areas in favour of their association. While the primary responsibility of conveying the title is that of the promoter, the allottee is also responsible to participate in the process and extend all co-operation in the matter.

Penal consequences in case of failure

The allottee, in case he fails to comply with or contravene any order decision or direction of the RERA, is liable to a penalty computed per day for the period during which such default continues. The penalty may cumulatively extend up to 5% of the cost of the building, apartment or plot allotted to him as may be determined by the authority.

In case he fails to comply with or contravenes any order or direction of the Real Estate Appellate Tribunal he can be punished with imprisonment for a term up to one year or with fine for everyday during which such default continues which may extend up to 10% of the

cost of the building, apartment or plot. He may also be punished by imprisonment as well as fine in appropriate case.

Synopsis of Topic

- *Establishment*
- *Composition of Authority*
- *Qualifications of Chairperson and Members of Authority*
- *Term of office of Chairperson and Members*
- *Functions of Authority*
- *Powers of Authority*
    - *Powers of Authority to call for information, conduct investigations*
    - *Power to issue interim orders*
    - *Powers of Authority to issue directions*
    - *Powers to impose penalty*
    - *Power to make reference*
    - *Power of rectification of orders*
    - *Power of recovery of interest or penalty or compensation and enforcement of order, etc*

Real Estate Regulatory Authority

Sec.20 of Real Estate(Regulation & Development), 2016 provides for the establishment and incorporation of Real Estate Regulatory Authority.

Establishment

It is the responsibility of the appropriate Govt. to establish the Real Estate Regulatory Authority within a period of one year from the date of coming into force of this Act, to exercise the powers conferred on it and to perform the functions assigned to it under this Act:

The appropriate Government of two or more States or Union territories have the power to establish one single Authority or the appropriate Govt. of a State has the power to establish more than one Authority in a State or Union territory.

The real estate regulatory Authority is a body corporate by the name as mentioned above

having perpetual succession and a common seal, with the power, to acquire, hold and dispose of property, both movable and immovable, and to contract, and can by the said name, sue or be sued.

Composition of Authority

The Authority consists of a Chairperson and two whole time Members appointed by the appropriate Government.

Qualifications of Chairperson and Members of Authority

The Chairperson and other Members of the Authority are appointed by the appropriate Government on the recommendations of a Selection Committee consisting of the Chief Justice of the High Court or his nominee, the Secretary of the Department dealing with Housing and the Law Secretary, from amongst persons having adequate knowledge of and professional experience of at-least twenty years in case of the Chairperson and fifteen years in the case of the Members in urban development, housing, real estate development, infrastructure, economics, technical experts from relevant fields, planning, law, commerce, accountancy, industry, management, social service, public affairs or administration.

To be appointed as a Chairperson a person should have held the post of Additional Secretary to the Central Government or any equivalent post in the Central Government or State Government.

A person who is, or has been, in the service of the State Government is not appointed as a member unless such person has held the post of Secretary to the State Government or any equivalent post in the State Government or Central Government.

Term of office of Chairperson and Members

The Chairperson and Members are to hold office for a term not exceeding five years from the date on which they enter upon their office, or until they attain the age of sixty-five years, whichever is earlier and are not eligible for re-appointment.

Before appointing any person as a Chairperson or Member, the appropriate Government should satisfy itself that the person does not have any such financial or other interest as is likely to affect his functions prejudicially as such Member.

Functions of Authority

The functions of the Authority shall include

a) to register and regulate real estate projects and real estate agents registered

b) to publish and maintain a website of records, for public viewing, of all real estate projects for which registration has been given, including information provided in the application for which registration has been granted;

c) to maintain a database, on its website, for public viewing, and enter the names and photographs of promoters as defaulters including the project details, registration for which has been revoked or have been penalised with reasons therefor, for access to the general public;

d) to maintain a database, on its website, for public viewing, and enter the names and photographs of real estate agents who have applied and registered under this Act, including those whose registration has been rejected or revoked;

e) to fix through regulations for each areas under its jurisdiction the standard fees to be levied on the allottees or the promoter or the real estate agent;

f) to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder;

g) to ensure compliance of its regulations or orders or directions made in exercise of its powers under this Act;

h) to perform such other functions as may be entrusted to the Authority by the appropriate Government as may be necessary to carry out the provisions of this Act.

Powers of Authority

Powers of Authority to call for information, conduct investigations

Section 35 of the Act empowers the Real Estate Regulatory Authority to make an inquiry and investigate in relation to the promoter, allottee or the real estate agent. Section 35(1)of the Act provides that the Real Estate Regulatory Authority can either suo moto or on a complain, initiate any inquiry and investigation into allegations against the promoter, allottee or the real estate agent. It is on the discretion of the Real Estate Regulatory Authority to appoint one or more persons to make an inquiry in relation to the affairs of the promoter, allottee or the real estate agent, as the case may be.

The Authority has the powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:

(i) the discovery and production of books of account and other documents, at such place and at such time as may be specified by the Authority;

(ii) summoning and enforcing the attendance of persons and examining them on oath;

(iii) issuing commissions for the examination of witnesses or documents;

(iv) any other matter which may be prescribed.

Power to issue interim orders

The Authority has the power to restrain any promoter, allottee or real estate agent from carrying on any act which is in contravention of this Act, or the rules and regulations made thereunder until the conclusion of such inquiry or until further orders, without giving notice to such party.

Powers of Authority to issue directions

The Authority has the power to issue such directions, to the promoters or allottees or real estate agents, as it may consider necessary for the purpose of discharging its functions under the provisions of this Act or rules or regulations made thereunder, and such directions shall be binding on all concerned.

Powers to impose penalty

The Authority has the powers to impose penalty or interest, in regard to any contravention of obligations cast upon the promoters, the allottees and the real estate agents, under this Act or the rules and the regulations made thereunder.

The Authority is guided by the principles of natural justice and also the power to regulate its own procedure.

Power to make reference

The Authority, has the suo motu power to make reference to the Competition Commission of India in any matter where an issue is raised relating to agreement, action, omission, practice or procedure that:

(a) has an appreciable prevention, restriction or distortion of competition in connection with the development of a real estate project; or

(b) has effect of market power of monopoly situation being abused for affecting interest of allottees adversely

Power of rectification of orders

The Authority has the power to amend any order passed by it within a period of two years from the date of the order made under the Act, with a view to rectifying any mistake apparent from the record, and should make such amendment, if the mistake is brought to its notice by the parties.

Amendment should not be made in respect of any order against which an appeal has been preferred under this Act.

While rectifying any mistake apparent from record, the Authority should not, amend any substantive part of its order passed under the provisions of the Act.

Power of recovery of interest or penalty or compensation and enforcement of order, etc

If a promoter or an allottee or a real estate agent, fails to pay any interest or penalty or compensation imposed on him, by any adjudicating officer or the Regulatory Authority or the Appellate Authority, under this Act or the rules and regulations made thereunder the authority has the power to recover the same from them, in such manner as may be prescribed as an arrears of land revenue

If any adjudicating officer or the Regulatory Authority or the Appellate Tribunal, issues any order or directs any person to do any act, or refrain from doing any act, then in case of failure by any person to comply with such order or direction, the same shall be enforced, in such manner as may be prescribed.

Synopsis of Topic

- *Overview*
- *Constitution of the Appellate Tribunal*
- *Composition of Appellate Tribunal*
- *Qualifications for appointment of Chairperson and Members*
- *Term of office*
- *Powers & Functions of the Appellate Tribunal*
- *Administrative powers*
- *Additional Powers of Appellate Tribunal*

Real Estate Appellate Tribunal

Overview

Sec.43 provides for the establishment of Real Estate Appellate Tribunal within a period of one year from the date of coming into force of Real Estate (Regulation and Development) Act, 2016.

Any person aggrieved by any direction or decision or order made by the Authority or by an adjudicating officer under this Act may prefer an appeal before the Appellate Tribunal having jurisdiction over the matter-Sec.43(5).

Constitution of the Appellate Tribunal

The appropriate government is empowered to establish one or more benches of the Appellate Tribunal, for various jurisdictions, in the State or Union territory.

Every bench of the Appellate Tribunal consists of at least one Judicial Member and one Administrative or Technical Member.

The appropriate Government of two or more States or Union territories can establish one single Appellate Tribunal.

Composition of Appellate Tribunal

The Appellate Tribunal consists of a Chairperson and not less than two whole time Members

of which one is a Judicial member and other is a Technical or Administrative Member, appointed by the appropriate Government.

Qualifications for appointment of Chairperson and Members

A person is not qualified for appointment as the Chairperson or a Member of the Appellate Tribunal unless he:

a) in the case of **Chairperson**, is or has been a Judge of a High Court; and

b) in the case of a **Judicial Member** he has held a judicial office in the territory of India for at least fifteen years or has been a member of the Indian Legal Service and has held the post of Additional Secretary of that service or any equivalent post, or has been an advocate for at least twenty years with experience in dealing with real estate matters; and

c) in the case of a **Technical or Administrative Member**, he is a person who is well-versed in the field of urban development, housing, real estate development, infrastructure, economics, planning, law, commerce, accountancy, industry, management, public affairs or administration and possesses experience of at least twenty years in the field or who has held the post in the Central Government or a State Government equivalent to the post of Additional Secretary to the Government of India or an equivalent post in the Central Government or an equivalent post in the State Government.

The Chairperson of the Appellate Tribunal is appointed by the appropriate Government in consultation with the Chief Justice of High Court or his nominee.

The Judicial Members and Technical or Administrative Members of the Appellate Tribunal are appointed by the appropriate Government on the recommendations of a Selection Committee consisting of the Chief Justice of the High Court or his nominee, the Secretary of the Department handling Housing and the Law Secretary.

Term of office

The Chairperson of the Appellate Tribunal or a Member of the Appellate Tribunal is to hold office, for a term not exceeding five years from the date on which he enters upon his office, but is not eligible for re-appointment:

In case a person, who is or has been a Judge of a High Court, has been appointed as

Chairperson of the Tribunal, he should not hold office after he has attained the age of sixty-seven years.

Judicial Member or Technical or Administrative Member should not hold office after he has attained the age of sixty-five years.

Before appointing any person as Chairperson or Member, the appropriate Government should satisfy itself that the person does not have any such financial or other interest, as is likely to affect prejudicially his functions as such member.

Powers & Functions of the Appellate Tribunal

The Appellate Tribunal is not bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but must be guided by the principles of natural justice. The Appellate Tribunal also has the power to regulate its own procedure and also is not bound by the rules of evidence contained in the Indian Evidence Act, 1872 (1 of 1872).

For the purpose of discharging its functions under this Act the Appellate Tribunal has the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) in respect of the following matters, namely:—

a) summoning and enforcing the attendance of any person and examining him on oath;

b) requiring the discovery and production of documents; (c) receiving evidence on affidavits;

c) issuing commissions for the examinations of witnesses or documents;

d) reviewing its decisions;

e) dismissing an application for default or directing it ex parte; and

f) any other matter which may be prescribed.

Administrative powers

The Chairperson has the powers of general superintendence and direction in the conduct of the affairs of Appellate Tribunal and to preside over the meetings of the Appellate Tribunal, exercise and discharge such administrative powers and functions of the Appellate Tribunal as may be prescribed.

Additional Powers of Appellate Tribunal

The Appellate Tribunal has the following additional powers to:

a) Require the promoter or allottee or real estate agent to furnish in writing such information or explanation or produce such documents reasonable time, as it may deem necessary;

b) Requisitioning any public record or document or copy of such record or document from any office.

The Appellate Tribunal may call upon such experts or consultants from the fields of economics, commerce, accountancy, real estate, competition, construction, architecture, law or engineering or from any other discipline as it deems necessary, to assist the Appellate Tribunal in the conduct of any enquiry or proceedings before it.

Every order of the Appellate Tribunal under this Act is executable by the Appellate Tribunal as a decree of the Civil Court.

The Appellate Tribunal may send any of its order to a Civil Court having local jurisdiction and such Civil Court should execute the order as if it were a decree made by the court.

Synopsis of Topic

- **A - Penal consequences of defaults by the promoters**

(i) Contravention of Section-3 dealing with registration of the project (Sec. 59)

(ii) Contravention of Section-4 obligating the promoter to make application for registration and furnish information (Sec. 60)

(iii) Contravention of other provisions of the Act (Sec. 61)

(iv) Failure to comply with the orders of RERA (Sec. 63)

(v) Failure to comply with orders of the Real Estate Appellate Tribunal (Sec. 64)

- **B – Defaults committed by the allottees**

(i) Failure to comply with the order of the RERA (Sec. 67)

(ii) Failure to comply with the orders of the Real Estate Appellate Tribunal (Sec. 68)

- **C – Penal consequences for default by agents**

(i) Failure to facilitate sale/ purchase without registration (Sec. 62)

(ii) Failure to perform the functions under the Act (Sec. 62)

(iii) Failure to comply with orders of the RERA (Sec. 65)

(iv) Failure to comply with orders of the Real Estate Appellate Tribunal (Sec. 66)

- Nature of Prescribed Punishment
- Offences by Companies
- Compounding of offences
- Quick Reference
- A. Offence-wise Penalties for Promoters
- B. Offence-wise Penalties for Real Estate Agents
- C. Offence-wise Penalties for Allottees

- State wise RERA implementations

Offences and Penalties

The Act lays down obligations on the promoters, allottees and real estate agents and also provides for consequences for defaults by way of penalty, fine and imprisonment for contravening those provisions by them. Chapter VIII of the Act containing Sections 59 to 70 deals with the same.

A - Penal consequences of defaults by the promoters

(i) Contravention of Section-3 dealing with registration of the project (Sec. 59)

Section 3 requires the promoters of real estate projects to get their projects registered with the RERA and prohibits them from advertising, marketing, booking, selling, offering for sale or inviting people in any other manner for purchasing the buildings, apartments or plots in the project without getting the project registered. In case the promoter contravenes the provision and does any such publicity without registration, he can be made liable to pay penalty which can be of an amount up to 10% of the estimated cost of the project.

In case the promoter continues to default even after the order imposing penalty mentioned above is passed, he can be punished either with imprisonment up to three years or with fine up to 10% of the estimated cost of the project or with imprisonment as well as fine. The amount of penalty and the estimated cost of the project is to be determined by the RERA.

(ii) Contravention of Section-4 obligating the promoter to make application for registration and furnish information (Sec. 60)

In order to get the project registered, the promoter is to make an application u/s. 4 to the RERA within the prescribed time. The application is to be accompanied by the documents containing information prescribed in sub-section (2) of section 4 and declarations to the effect mentioned in (A) to (D) of Clause (l) to section 4(2).

If the promoter does not act as per the provision or submits information or, makes declaration which is false, he can be made liable to penalty up to the maximum amount equal to 5% of the estimated cost of the project as may be determined by the RERA.

(iii) Contravention of other provisions of the Act (Sec. 61)

Punishment for contravening any provision of the Act or rules or regulations thereunder, except provisions of Sections 3 and 4 in respect of which consequences are provided separately in terms of Section 61. Such contravention is made punishable with penalty which can be up to an amount equal to 5% of the estimated cost of the project as determined by the RERA.

The provision takes within its ambit contravention of all the provisions (except Section 3 and 4) without specifying individual defaults which can be made punishable. Going through the provisions of the Act, the penal consequence provided in the section may, *inter alia*, be for contravention of following provisions: –

i. failure to enter details on website [Sec.11(1)]

ii. failure to quote website address in advertisement for sale [Sec.11(2)]

iii. failure to make prescribed information available at the time of booking and issue of allotment letter [Sec.11(3)]

iv. failure to obtain completion/occupancy certificate and make it available to allottee [Sec.11(4)(b)]

v. failure to obtain lease certificate where the development is on leasehold land [Sec.11(4)(c)]

vi. failure to provide and maintain essential services [Sec.11(4)(d)]

vii. failure to enable formation of a society or any other association of buyers [Sec.11(4)(e)]

viii. failure to execute conveyance deed in favour of allottee and association of allottees [Sec.11(4)(f) and Sec.17]

ix. failure to pay outgoings until transfer of possession [Sec.11(4)(g)]

x. Mortgaging or creating a charge on property after executing agreement for sale [Sec.11(4)(h)]

xi. failure to prepare and maintain details as may be specified by RERA [Sec.11(6)]

xii. Accepting more than 10% of the cost without executing and registering agreement for sale [Sec.13]

xiii. Not adhering to sanctioned plan and project specifications [Sec.14(1)]

xiv. Not rectifying defects brought to notice within five years [Sec.14(3)]

xv. Transferring or assigning majority rights without obtaining prior consent of two-thirds allottees [Sec.15]

xvi. failure to get notified insurances [Sec.16]

xvii. failure to complete the project in time and give possession as per agreed terms [Sec.18]

The penal provision is common for all these defaults and other contraventions/ defaults. A view is possible that the amount of maximum penalty specified as up to five per cent of estimated cost is for all the defaults taken together. This appears to be a contentious view. Considering that the specified amount if applied to individual defaults might involve unintended harsh punishment particularly in cases where one default necessarily follow the other, the RERA in such cases is likely to take a reasonable view taking the nature of default into consideration.

(iv) Failure to comply with the orders of RERA (Sec. 63)

A promoter who fails to comply with or contravenes any of the orders or directions of the RERA is made punishable by penalty calculated at the determined amount per day for the period during which the default continues subject to the maximum imposable penalty of amount equal to 5% of the estimated cost of the project as may be determined by the authority.

(v) Failure to comply with orders of the Real Estate Appellate Tribunal (Sec. 64)

Failure by the promoter to comply with the orders, decisions or directions of the Real Estate Appellate Tribunal is made punishable with imprisonment for a term up to three years or with fine for every day of default or, with both. The fine to be imposed can be of an amount up to 10% of the estimated cost of the real estate project.

B – Defaults committed by the allottees

(i) Failure to comply with the order of the RERA (Sec. 67)

The allottee contravening or failing to comply with any order, decision or direction of the Regulatory Authority will be liable for penalty as may be determined by the Authority for the period during which such default continues. The total penalty so imposable can be up to an amount equal to 5% of the cost of building, apartment or plot as determined by the

authority.

(ii) Failure to comply with the orders of the Real Estate Appellate Tribunal (Sec. 68)

If any allottee fails to comply with or contravenes any of the orders or directions of the Real Estate Appellate Tribunal, he can be made punishable with imprisonment for a term up to one year or with fine for every day during which such default continues or with both. The fine so determined as payable can be up to an amount equal to 10% of the cost of building, apartment or plot in respect of which the defaulter is an allottee.

C – Penal consequences for default by agents

(i) Failure to facilitate sale/ purchase without registration (Sec. 62)

Section 9(1) of the Act prohibits a real estate agent from facilitating the sale or purchase of a building, apartment or plot in a registered real estate project or acting on behalf of any person for such facilitation without obtaining registration as a real estate agent.

Any violation of the provision makes him liable to a penalty which will be Rs.10,000/- per day of default. The total amount of penalty shall be subject to maximum amount equal to 5% of the cost of building, apartment or plot, sale or purchase of which was facilitated by him.

(ii) Failure to perform the functions under the Act (Sec. 62)

Section 10 of the Act lays down the functions of the real estate agent which he is required to perform under the Act. Failure to perform such functions in the way laid down in the Act can be made punishable with penalty computed at

10,000/- for every day of the default which can cumulatively go up to 5% of the cost of building apartment or plot of which he facilitated the sale or purchase.

(iii) Failure to comply with orders of the RERA (Sec. 65)

If any real estate agent, fails to comply with, or contravenes any orders or directions of the Authority, he shall be liable to a penalty for every day during which such default continues, which may cumulatively extend up to five per cent, of the estimated cost of plot, apartment or building, for which the sale or purchase has been facilitated by him and as determined by the Authority.

(iv) Failure to comply with orders of the Real Estate Appellate Tribunal (Sec. 66)

If any real estate agent, fails to comply with, or contravenes any of the orders, decisions or directions of the Appellate Tribunal, he shall be punishable with imprisonment for a term which may extend up to one year or with fine for every day during which such default continues, which may cumulatively extend up to ten per cent of the estimated cost of plot, apartment or building, for which the sale or purchase has been facilitated, or with both.

Nature of Prescribed Punishment

The Act gives the title "Offences, Penalties and Adjudication" to Chapter VIII which prescribes the consequences for various defaults. For most of the defaults barring (i) continued default by the promoters u/s. 3 and (ii) contravention of the orders, decisions or directions of Appellate Tribunal by the promoter, the agent or the allottee, the punishment is by way of penalty which is to be computed with reference to the estimated cost of the project or the cost of the building, apartment or plot in question. The question arises as to whether the penalties prescribed are civil penalties or penalties on conviction for an offence which is taken as illegal act or crime inviting prosecution. In case the defaults mentioned in Chapter VIII are considered as offences being acts which are illegal, the consequences will involve prosecution to be dealt with in accordance with the procedure laid down for such complaints.

The Act does not specify whether the penalties are civil penalties or penalties for contraventions considered as offence. The title of the chapter mentions 'offence' as well as 'penalties' which seem to indicate that while some of the punishments are for default considered as offence and involve prosecution, the others are of the nature of civil penalties to be imposed by the RERA. The distinction is material because of the different principles of jurisprudence applicable to them. While a civil penalty mainly considers the fact of defaults simply, conviction requires establishing the intention of the defaulter, his guilty mind, motive and other factors pointing to the state of mind which play a decisive role.

Wherever penalty is provided, the maximum amount of penalty is to be determined with reference to the estimated cost of the real estate project or of building, apartment or plot in question as determined by the Authority. These penalties appear to be of the nature of civil penalties and can be imposed by the Regulatory Authority on the establishment of default within the maximum amount laid down under the Act without a decisive

consideration of the motive or mental state of the offender. These are the penalties prescribed under –

1. Section 59(1) – default u/s. 3
2. Section 60 – default u/s. 4
3. Section 61 – default by promoter under other section
4. Section 62 – default by agent u/s. 9(1)
5. Section 63 – contravention by promoter of the orders of RERA
6. Section 65 – contravention by the agent of the orders of RERA
7. Section 67 – Contravention by allottee of the orders of RERA

The proceeding in respect of these penalties will be initiated and carried out by the Regulatory Authority.

Consequences provided under the following provisions prescribe punishment with imprisonment or fine or both:-

1. Section 59 (2) – Continue default by the promoter u/s. 3
2. Section 64 – Contravention by promoter of the directions of REAT
3. Section 66 - Contravention by agent of the directions of REAT
4. Section 68 - Contravention by allottee of the directions of REAT

These are provisions in respect of default by the promoter and contravention of orders of the Appellate Tribunal by the promoter, allottee and the real estate agent. These provisions prescribe prosecution for defaults considered as offence which proceedings are not before the Regulatory Authority. These are provisions for prosecution as is indicated by prescription of 'fine' and 'imprisonment' instead of penalty and the absence of expression 'as determined by the Authority' used in other sections.

For offences described under 59(2), 64, 66, and 68, the penal action by way of prosecution will be on a complaint by the Authority. Reference in the convention may be made to the provision contained in Section 80 under which no court shall take cognizance of any offence punishable under the Act or the rules or regulations made thereunder save on a complaint in writing made by the Authority or by any officer of the Authority duly authorised by it for the purpose.

Offences by Companies

If the offence punishable under the Act is committed by a company, every person who, at the time of the offence, was in charge of the conduct of the business of the company or was responsible for its conduct as well as the Company will be deemed to be the person committing the offence and shall be proceeded against in accordance with the provisions of the Act. This will, however, not apply if the person in charge of or responsible for the conduct of business proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of that offence.

It is not only the person in charge or responsible for the conduct of business who can be punishable but also the director, manager, secretary or any other officer of the company who can be charged for the offence if it can be proved that the offence was committed with his consent or connivance or was attributable to any neglect on his part.

Compounding of offences

If any person is punishable for an offence under the Act, he can either before or after the initiation of proceedings, seek compounding of the offences by the court and the Act permits such compounding subject to the terms and conditions and on payment of fees as may be prescribed in the rules to be framed. It is also provided that the amount to be charged on compounding will not exceed the maximum amount if fine imposable under the Act for that offence.

Quick Reference

A. Offence-wise Penalties for Promoters

Section	**Offence**	**Penalties**
Section 59	Non-registration of a project	10% of estimated cost of real estate project
Section 59	Not obeying orders or directions in connection with the above offence	Imprisonment up to 3 years with an or without fine being 10% of the estimated cost of real estate project
Section	Providing false information etc. and	5% of the estimated cost of real estate

60	other conventions	project
Section 61	Contravention of any order of the RERA	Penalty for every day of defaults which may cumulatively extend up to 5% of the estimated cost of real estate project
Section 64	Contravention of the orders or direction of the appellate tribunal	Imprisonment up to 3 years with or without fine which may cumulatively up to 5% of estimated cost of real estate project.

B. Offence-wise Penalties for Real Estate Agents

Section	**Offence**	**Penalties**
Section 62	Contravention of the applicable provisions of the Act	Rs. 10,000 per day of defaults which may extend up to 5% of the cost of the property
Section 65	Contravention of the orders or direction of the RERA	Penalty on a daily basis which may cumulatively extend up to 5% of the estimated cost of the property whose sale or purchase was facilitated
Section 66	Contravention of the orders or direction of appellate tribunal	Imprisonment up to 1 year with without fine which may extend up to 10% of estimated cost of project

C. Offence-wise Penalties for Allottees

Section	**Offence**	**Penalties**
Section 67	Contravention of any order of the RERA	Penalty for the period during which defaults continues which may cumulatively extend up to 5% of the apartment or building cost
Section 68	Contravention of the orders or direction of appellate tribunal	Imprisonment up to 1 year with or without fine for every day during which such defaults continues, which may cumulatively extend up to 5% of the

		apartments or be building cost

State wise RERA implementations

State	**Implementation status**	**Penalties for non-compliance**
Andhra pradesh	27 March 2017	**Diluted** – Compounding of offence clause has been included to avoid imprisonment, 10% of project cost as penalty
Bihar	27 April 2017	**Diluted –** Compounding of offence clause has been included to avoid imprisonment and kept 10% of project cost as the penalty.
Kerala	3 February 2016	**Inline** – Imprisonment for a term which may be extended up to three years, or with fine which may extend up to 10% of estimated cost of the real estate project, or both.
Madhya Pradesh	22 October 2016	**Diluted** – Imprisonment for a term which may be extended up to three years, or with fine which may extend up to 10% of the approximate cost of the real estate project, or both.
Maharashtra	20 April 2017	**Diluted** – Did not mention imprisonment penalties and also there is no clarity on monetary fines/penalties as the percentage of total real estate project cost. The fine imposed on builders is either double of the registration fees of Rs 2 lakh, whichever is higher if the provisions are not been followed up.

Rajasthan	1 May 2017	**Diluted –** Compounding of offence clause has been added to avoid imprisonment, 10% of project cost as the penalty has been kept under. Initially real estate developers had to pay 2% of the project cost or 10 times the registration fee as the penalty, whichever was higher for the delay in process of registration As of now, the fines have been increased from 2% to 10%, and this rate is now current, since October 1st, 2017.
Uttar Pradesh	27 October 2016	**Diluted –** Compounding of offence clause is included to avoid imprisonment term, 10% of project cost as penalty Deadline for real estate companies was set for 15 August 2017 but many companies have still not registered. Penalties were decided by the UP RERA authorities as: Registration between 16 – 31st Aug 2017 – Fine would be equivalent to 1% of the cost of the project. Registration between 1- 15th Sep 2017 – Fine would be equivalent to 5% of the cost of the project. Registration between 16-30th Sep 2017 – Fine would be equivalent to 10% of the cost of the project.
Odisha	25 February 2017	**Diluted** – Compounding of offence clause which is included to avoid imprisonment, 10% of project cost as the penalty.

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